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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 140

DAVID B. MOREY, WILLIAM C. SMITH, AND FRANCIS B. RICHARDSON, APPELLANTS,

vs.

HAMILTON D. LOCKWOOD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED SEPTEMBER 15, 1887.

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3 UNITED STATES OF AMERICA,
Massachussetts District, ss:

At a Circuit Court of the United States for the first circuit begun and holden at Boston, within and for the district of Massachusetts, on Wesnesday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, before the honorable Nathan Clifford, associate justice, and the honorable John Lowell, district judge.

HAMILTON D. LOCKWOOD, complainant,
vs.
DAVID B. MOREY *et als*, respondents. } In equity.

4 The bill of complaint in this cause was filed in the clerk's office, on the fifth day of August, A. D. 1865, and is in the words and figures following, namely:

5 *Bill of complaint.*

To the honorable the justices of the Circuit Court of the United States, for the first circuit within and for the district of Massachussets, sitting in equity:

Hamilton D. Lockwood, of Charlestown, in the district of Massachussetts, bring this his bill against David B. Morey, of Malden, William C. Smith, of said Charlestown, and Francis B. Richardson, of Boston, all in said district.

And thereupon your orator complains and says that before the 31st day of March, A. D. 1857, Charles H. Davidson, of Charlestown, and Herman E. Davidson, of Gloucester, both in the State and district of Massachussets, being the original and first inventors of a certain new and useful enema syringe, which had not been for more than two years in public use, or on sale with their consent or allowance, made application in due form of law for letters patents of the United States therefor, in pursuance of which application such letters patent, after due proceedings had, as in such cases provided, were granted, issued, and delivered to the said Charles H., assignee of the said Charles H. and Herman E., under the seal of the United States Patent Office, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, and bearing date the said 31st day of March, A. D. 1857, whereby there was granted and secured to the said Charles H. Davidson, his heirs, administrators and assigns, for the term of fourteen years from the said date thereof, the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the said enema syringe therein so entitled, a description whereof was given in the words of the said Charles H. and Herman E. in the schedule thereto annexed and making part thereof, as in and by a certified copy of said letters patent in court to be produced will more fully appear.

6 That afterwards and before the 25th day of April, A. D. 1865, the said letters patent and all right, title, and interest in and to the same, and the invention thereby secured became vested in your orator by certain deeds of assignment since duly recorded in the Patent Office, and your orator so being the assignee and owner of said letters patent, believing that the said original letters patent of said Charles H. and Herman E. were inoperative or invalid, by reason of a defective and insufficient description and specification, which error arose by inadvertency and mistake, and without any fraudulent or deceptive intention, did surrender the said original letters patent, according to law, to the Commissioner of Patents, and the same were cancelled, and new letters patent, bearing date the said 25th day of April, A. D. 1865, under the seal of the United States Patent Office, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, did issue, according to law, for the same invention, and on an amended specification, granting to your orator, his heirs, administrators or assigns, for the remainder of the said term of fourteen years from the 31st day of March, A. D. 1857, the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the said enema syringe, all which by the said re-issued patent in court to be produced and shown unto your honors will more fully appear, in, to, and under which re-issued letter patent your orator has ever since the date of said re-issue held and owned the exclusive right, title, and interest.

That immediately upon his becoming owner, as aforesaid, of the said original letter patent, your orator put the said invention into use, and has ever since, and both before and after the granting of the said re-issue, manufactured and sold the same, and syringes embracing the same, in large numbers; and with the exception of the infringement hereinafter complained of, and a like infringement by others, against whom proceedings have been commenced therefor, has always had the exclusive possession and enjoyment thereof, and has never acquiesced in any violation or denial of his said rights, and the said complainant's said right is of great value to him.

But that the respondents herein, well knowing the premises, and notwithstanding notice by your orator and request to desist therefrom,

7 have, in violation of your orator's said exclusive right, and without license, at Boston aforesaid, and elsewhere within the said commonwealth and district of Massachussets, at large profit manufactured and sold, and still continue to manufacture and sell, enema syringes, containing said invention, the exclusive right to make and selle which is, as aforesaid, granted and secured to your orator, but how many such they have so made and sold your orator does not certainly know.

And your orator will be subject to great and irreparable injury unless he shall obtain from your honors the relief hereby sought.

To the end therefore that the respondents may, upon their corporal oath, full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated, and they there-

unto distinctly interrogated, according to the best of their knowledge, information and belief, and more especially that they may answer and set forth whether they, or some and which of them, have not, since the date of said re-issue, manufactured large numbers and how many enema syringes, each having an elastic bulb or chamber flexible tubes and a suitable valvular arrangement, organized so as to operate substantially as is described in the said re-issue description and specification, and, if not the same, then how differing therefrom; also to whom the said enema syringes have been sold, and at what cost the same were manufactured, and at what prices sold; also how many enema syringes manufactured by them, or either of them, they or either of them have now on hand.

And that the respondents may answer the premises, and that they may be decreed to account for and pay over to your orator all such gains and profits as have accrued to them from their said violation of said re-issue patent by said manufacture and sale, and that they may be restrained by an injunction issuing out of this honorable court from making or vending any of said enema syringes, embracing substantially and in principle the same construction and mode of operation as that secured exclusively to your orator as aforesaid, and that the enema syringes now in possession of the respondents may be destroyed or delivered up to your orator, and that the respondents may pay to your orator the damages by him most wrongfully sustained, and for such other and further relief as the nature of the case may require and to your honors may seem meet.

8 May it please your honors to grant unto your orators, not only a writ of injunction conformable to the prayer of this bill, but also the writ of subpœna directed to the said David B. Morey, William C. Smith, and Francis B. Richardson, commanding them and each of them to appear and answer this bill of complaint, and to do and receive what to your honors shall seem meet, and your orator will ever pray, etc. H. D. LOCKWOOD.

CAUSTEN BROWNE,
Solicitor and of Counsel for Complainant.

UNITED STATES OF AMERICA,
District of Massachusetts:

On the fourth day of August, A. D. 1865, before me, came Hamilton D. Lockwood, the complainant in the foregoing bill of complaint, and who has signed the same, and having been duly sworn saith that he has heard the said bill read and understands the contents thereof; that the same is true of his own knowledge, excepting as to the matters therein stated to be on his information and belief, and that, as to those matters, he believes it to be true.

[SEAL.] N. AUSTIN PARKS,
Notary Public.

8*a*. This cause was duly entered at the May term of this court, A. D. 1865, when and where the parties appeared by their respective attorneys, and on the fourth day of September the respondents filed the following answer, namely:

9 *Answer.*

The answer of David B. Morey, William C. Smith and Francis B. Richardson, defendants to the bill of complaint of Hamilton D. Lockwood, plaintiff.

These defendants, reserving all right of exception to said bill of complaint, for answer thereto, severally say:

1. These defendants admit upon information and belief that letters patent of the United States, dated March 31, 1857, were issued to Charles H. Davidson, as stated in said bill.

2. These defendants are not informed of the assignment of said letters patent to the plaintiff, except by said bill, and they require the plaintiff to make legal proof of said assignment.

3. These defendants admit, upon information and belief, that said letters patent were surrendered, and new letters patent were issued, dated April 25, 1865, as stated in said bill; but they deny that the said re-issued patent was for the same invention for which the original patent was granted. And they aver that said re-issued patent covers what the Commissioner of Patents in said re-issue case decided was not patentable, nor intended to be patented by said re-issue.

4. These defendants are not informed, except by said bill, and they do not believe that the plaintiff ever had, in fact or in law, any exclusive possession under said original or re-issued patent, of said pretended invention; but, upon information and belief, they aver that the plaintiff has long acquiesced in the public and general use of said invention.

5. These defendants, upon information and belief, deny that said Charles H. Davidson and Herman E. Davidson were the original and first inventors of the syringe claimed in said re-issued patent; and they aver that the same thing, or a substantial and material part thereof, was before known to the following persons: Richard and G. A. Wright of Philadelphia, Pa., and Louis Groshobz of said
10 Philadelphia, George Snowden and Henry C. Snowden of said Philadelphia, John Thornley of said Philadelphia, and J. H. Gemrig of said Philadelphia, John Haskins of Roxbury, Mass., W. N. Davis & Brother of Boston, Mass., Fred. Hassam & Brother of said Boston, Dr. J. W. Phelps of said Boston, deceased, Dr. H. F. Johnson of said Boston, Fred. Siese of New York city, N. Y., Wm. F. Ford of said New York, Edward Oelzner of said New York, George Tieman of said New York, Thomas Richardson of said New York, F. M. Shepherd of said New York, Dr. Morris Mattson of said New York, Messrs. Lang & Co., 71 Maiden Lane, of said New York, and Dr. Walter Channing of said Boston, and Theodore Metcalf of said Boston, and Wm. H. Phelps of said Boston, A. Merrick of said Boston, James Essex of Newport, Rhode Island.

And that the same thing, or a substantial and material part thereof, was before used in the following places: Boston, Charlestown and Roxbury, Massachusetts; New Haven, Connecticut; Providence and Newport, Rhode Island; New York and Brooklyn, State of New York; Philadelphia and Gettysburg, Pennsylvania; and Baltimore, Mary-

land; and New Orleans, and the other principal cities of the United States; and that the same thing, or a substantial and material part thereof, was before described in the following printed publications:

11 And that the same thing, or a substantial and material part thereof was before patented as follows:

To John Pearshall and Daniel Gilbert, in the United States, in 1833, and J. H. Man, in England, in , and to Their, in France, Nov. 10, 1847, and Feb. 1, 1861; and Varnout, Feb. 25, 1850; and Maitre, July 21, 1854.

6. These defendants deny that they have infringed any valid rights of the plaintiff according to their best knowledge, information and belief; but they admit that they have heretofore made and sold, and are now making and selling, enema syringes under the following letters patent, to wit: Letters patent of the United States, dated Nov. 22, 1859, issued to Francis B. Richardson, one of these defendants; letters patent of the United States, dated May 8, 1860, issued to said Francis B. Richardson, and Byron L. Richardson; letters patent of the United States, dated January 27, 1863, issued to said Francis B. Richardson; and letters patent of the United States dated March 5, 1861, issued to said F. B. Richardson; and the re-issue thereof to said Francis B. Richardson, dated June 20, 1865. And these defendants say that all the syringes at any time made and sold by them are made according to said Richardson's patents, and that they have not made or sold any syringes having the flexible bag arranged in line with the flexible tubes since April 25, 1865. And they further say that, since the re-issue of the plaintiff's patent aforesaid, they have made and sold about 117 gross of enema syringes, each having an elastic bag, flexible tubes, and suitable valves, but not organized so as to operate as described in the plaintiff's said re-issued patent, in respect to a direct flow of the fluid through the instrument, or to a self-draining of the instrument when hanging pendant from the end of the tube; and they further say that the average cost of said syringes has been about $125 per gross, and the average price about $156 per gross; but the actual cost and price have varied almost from day to day; and that they have no stock of manufactured syringes on hand on account of such constant and large variation in the cost and price; and that they have not the means of stating in full the purchasers of said syringes.

7. These defendants, upon information and belief, aver that the said invention, originally patented to the said Charles H. Davidson, as assignee of himself and said Herman E. Davidson, as joint

12a inventors, had been in public use or on sale with the knowledge and consent of said inventors, or of one of them, and had been used or sold by them, or by one of them, more than two years prior to this application for a patent; and these defendants

further say, upon information and belief, that said Charles H. Davidson and Herman E. Davidson obtained their first knowledge of said invention from syringes made in foreign countries and imported into the United States.

Without this, that there is any other cause, matter, or thing, in the plaintiff's said bill of complaint, material or necessary for these defendants to make answer unto, and not herein or hereby sufficiently answered, confessed, traversed, and avoided, or denied, is true, to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver and maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

DAVID B. MOREY.
WILLIAM C. SMITH.
F. B. RICHARDSON.

J. Q. A. GRIFFIN.
BOUTWELL & BADGER.
Of Counsel for Defendants.

Circuit Court of the United States.

UNITED STATES OF AMERICA,
Massachusetts District, ss:

Personally appeared the above named David B. Morey, William C. Smith, and F. B. Richardson, on this sixteenth day of December, A. D. 1865, and made oath that they know the contents of the within answer; that the same are true as far as stated on knowledge; and as to matters stated on information the same are true according to the best of their information and belief. Before me.

JOHN G. STETSON,
Clerk pro tem.

12½ This cause was thence continued to the October term of this court, A. D. 1865, when the complainant filed the following replication, namely:

Replication.

The replication of Hamilton D. Lockwood, complainant, to the answer of David B. Morey, *et als.*, defendants.

This replicant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this: that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be

replied unto, confessed and avoided, traversed or denied, is
12c true. All which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by his said bill he has already prayed.

By his solicitor.

CAUSTEN BROWNE.

12d This cause was thence continued to the May term of this court, A. D. 1866, when publication was ordered, and the cause set down for hearing, and fully heard. The same was thence continued to the October term, A. D. 1866, when, to wit, November 14th, the following decree was entered, namely: Upon the final hearing of this case, upon the pleadings and proofs after arguments of counsel, and upon consideration by the court, it is ordered, adjudged, and decreed that the re-issued letters patent, dated April 25th, A. D. 1865, granted to the complainant as assignee of C. H. and H. E. Davidson, for a new and useful enema syringe, originally patented to said C. H. and H. E. Davidson, March 31st, A. D. 1857, is a good and valid patent; that said C. H. and H. E. Davidson were the original and first inventors of the improvements therein described and claimed; that the defendants have infringed upon
12e the said re-issue patent and the exclusive rights of the complainant thereunder; that the complainant recover of the defendants all gains and profits made by them from their infringement of the said re-issue patent, by their unlawful making, using, or vending to others to be used, of enema syringes, embracing the invention secured to the complainant by said re-issue, or any part thereof, at any time since April 25th, 1865; that the complainant recover of the defendants his costs and charges in this suit, to be duly taxed; that it be referred to George S. Hillard, esquire, one of the masters of this court, residing in the city of Boston, to take and state to the court an account of all such gains and profits made by the defendants as aforesaid; that the complaint on such accounting have the right to cause an examination of such defendants, or either of them, ore tenus or otherwise, and also the production of their books, vouchers, and documents; and that said defend-
12f ants attend for such purpose before said master, from time to time, as said master may direct; also that an injunction, according to the prayer of the bill, be issued against the defendants, to stand until the further order of the court.

On the 18th day of April, A. D. 1867, the master filed his report in the words and figures following, viz:

12g

12*h* Circuit Court of the United States.

HAMILTON D. LOCKWOOD
vs.
DAVID B. MOREY *et als.* } In equity.

DISTRICT OF MASSACHUSETTS, *ss:*

By a decretal order in the above cause, the undersigned was directed to take and state to the court an account of all gains and profits made by the defendants from their infringement of the plaintiff's re-issued patent by their unlawful making, using, or vending to others to be used, of enema syringes, embracing the invention secured to the complainant by the said re-issue, or any part thereof, at any time since April 25, 1865. In compliance with the said order, I caused the parties to appear before me, heard their proofs and arguments, and now proceed to report my conclusions.

At the first day of hearing before me the defendants filed an account in which it was stated that during the period between April 25, 1865, and November 21, 1866, they had made 44¾ gross of syringes, and that the total cost of manufacturing each gross was $152 20, and that the average selling price per gross was $156 00.

12*i* Subsequently an amendment to this account was offered, by which the cost of manufacturing each gross was reduced to $148 92, but no change was made in the selling price.

In the course of the hearing the books of the defendants were called for by the complainant and produced, and the counsel for the defendants, in his closing argument, stated that by careful examination of one of the said books it would appear that the average net price received per gross was $146 63, and contended that the defendant should be charged with that amount only. No motion had been made to amend the defendants' first account in this particular, and the defendants had not, nor had any one of them, been examined before me in connection with the said book, and the examination of said book was ex parte.

Upon these facts I find and report that the defendants are bound by the statement in their account aforesaid, and must be charged at the rate of $156 00 as the average selling price per gross.

On the other hand, the complainant's counsel, in his closing argument, contended that the books of the defendants showed that the real amount of their sales was 453 95-144 gross, instead of 441 1-2, as stated in the account aforesaid.

This was the result of an ex parte examination of the books, without any examination of the defendants, or any of them, before me on the point in question. But I find, and report, that upon these facts the defendants are entitled to stand upon the statement in their account, and that they are accordingly to be charged with the proceeds of the sale of 441 1-2 gross, and no more.

The syringes made by the defendants, in violation of the plaintiff's patent, are composed of metal and India-rubber. They are the result of many processes, and many hands are employed in the manufacture. As to the value of the labor expended, and materials used distinctly

and specifically in the manufacture of the syringes, excluding all general charges and expenses hereinafter set forth, there is very little controversy between the complainant and the defendants, and I report the value of such labor and materials to be $115 36 per gross, according to the schedule following:

12j

Bulbs	$28 80
Tubing	22 95
Metal parts	11 88
Shrinking on dross	1 18
Cost of casting, cutting off, and filing	6 58
Cost of turning	8 64
Varnishing and finishing	5 00
Boxes of all kinds	16 49
Royalty to Richardson	5 76
Excise tax	6 08
Hooks and eyes	2 00
	$115 36

The gross amount of the sales of 441½ gross at $156 00 per gross, is $68,864, and the aggregate deduction on account of labor and materials as above, is $50,876 00, leaving a balance of $17,988. From this last aggregate sum the defendants claim various deductions on account of general charges and expenses, and these claims I now proceed to consider.

First. A claim is made of $1,415 00, for interest for nineteen months on the capital employed in the manufacture of syringes. The defendants were engaged in other business besides that of manufacturing syringes, and the manufacture of syringes was one-third of their whole business. The capital employed in all their business was $45,000, and the claim is for interest on one-third of this sum.

But I am of the opinion that the claim cannot be allowed, and report accordingly. It is not an item usually considered by merchants and manufacturers in making up their profits, and I think the general usages among men of business should form the rule in estimating profits in cases like these.

Second. A claim is presented of $475, for wear and tear of the machinery and tools employed in manufacturing the syringes. There is no controversy as to the amount, but the complainant's counsel object to the item on principle, because the wear and tear were incurred in infringing the complainant's patent. But the syringes in question could not be made without machinery and tools, and the machinery and tools could not be used without suffering depreciation. The complainant and the defendants are herein under the same law. I think the claim should be allowed.

12k

Third. A claim is made on account of the salary paid to F. B. Richardson, one of the defendants, who was employed by Messrs. Morey & Smith, the other defendants, at a salary of $100 per month, making $1,900 for the nineteen months, embracing the period of infringement. The question is, how much of this shall be allowed as having been

received for services in manufacturing syringes. Upon this point Mr. Richardson himself is the best authority. In his examination before me, he stated that all his time, except about half an hour a day, was occupied in the manufacture of syringes. I, therefore, find and report an allowance of $1,800 for the services of Mr. Richardson.

Fourth. A similar claim is made on account of the time and services of David B. Morey and William C. Smith, defendants in the case, and members of the firm, which has manufactured syringes in infringement of the complainant's patent. The counsel for the complainant objects to this allowance, because it is, in effect, requiring the complainant to pay for time and services of men who have been infringing his patent and trespassing on his rights. But the question before me is simply a question of profits. The complainant himself could not have put his syringes into the market without a considerable expense in materials and labor. Was the labor of the defendants devoted to the manufacture of the syringes in question, in such manner that had they not so given their time and services they must have employed some other persons to do what they did, and paid them for it? I think the evidence before me justifies this conclusion I find and report, then, that the claim should be allowed, and the estimate made by the defendants of the value of their time for nineteen months, employed in the manufacture of syringes, twelve hundred dollars each, does not seem to be unreasonable, and I report that this is the sum to be allowed.

Fifth. The defendants claim an allowance of a considerable amount on account of materials, boxes, and moulds, rendered useless
127 by reason of the decree of the court. The claim is set forth by particulars as follows:

5 gross of syringes on hand, at $144 per gross	$720 00
14½ sets syringe metals, including labor expended, at $14 89	651 49
Syringe boxes and parts of boxes on hand	994 34
51 good metal moulds, prized at	819 50
37 others at same rate	594 22
	$3,779 55

Those all come under one class, and are to be determined by the same rule. I find and report that they must be all disallowed. All these articles have some value, even as raw material, and that belongs to the defendants. But the defendants cannot be paid for syringes, complete or incomplete, made in infringement of the complainant's patent, or for boxes to put them in, or for moulds used in casting the metal parts of the syringes. The defect of this claim is in the fact that it seeks compensation and reimbursement for wrong doing. I use this word in its legal and technical sense. The defendants may have acted in perfect good faith. They may have been wholly free from moral stain. They may have fully believed that they had a legal right to manufacture their syringes. Courts cannot determine questions like these. Before me the defendants

are simply trespassers and wrong-doers. It is their misfortune that they have on hand a considerable amount of property which the decision of the court has rendered of comparatively little value; but it is a misfortune for which there is no legal remedy.

During the hearing before me, which occupied several days, no evidence was offered upon any other points than the above but the defendants' counsel, in his closing argument before me, was purposing to speak upon the item of "Rent, steam power, firing," &c., which was minuted upon his brief, but I declined hearing him, because no evidence had been offered. But after taking the papers into my hands, it appeared to me that the omission to offer testimony on these points had been an oversight, and that the ends of
12*m* truth and justice required that the hearing should be reopened, in order to receive evidence on these points. I accordingly issued an order to this effect, the counsel for the complainant objecting thereto.

A hearing was accordingly had, and Mr. Morey, one of the defendants, presented an account of further expenses, as follows, and was examined therein:

Insurance	$548 62	one-third	$182 87
Rent	1,741 67	"	580 55
Teaming	728 27	"	242 75
Steam power	729 13	two-thirds	486 08
Coal	701 00	"	467 33

As to the first three items above mentioned no objection was made as to the amount or proportion, and I find and report that they are to be allowed. But the proportion of the amounts of the last two items, as applicable to the manufacture of syringes, was objected to. Mr. Morey stated that the manufacture of syringes comprised more than two-thirds of their manufacturing business, and that the coal and steam power were exclusively employed in their manufacturing business, except that their shop was warmed by the coal. A cross-examination of Mr. Morey did not bring out any facts which threw any considerable doubt upon his conclusions, and I therefore find and report that the above claim for steam power should be allowed, and that the amount claimed for coal shall be reduced to $400, because, as above stated, a part of the coal was used for warming the shop.

The aggregate of the credits herein allowed by me to the defendants is $6,167 25. Deducting this sum from the amount hereinbefore stated of the difference between the selling price and the cost of labor and materials of all syringes manufactured, viz., $17,988 00, there remains the sum of $11,820 75, for which amount the defendants must be charged, together with interest from the date of the decree, and the expenses of the hearing before me.

All which is respectfully submitted.

GEO. S. HILLARD,
Master in Chancery.

12*n* On the sixth day of May, A. D. 1867, the complainant filed his exceptions to the master's report in words and figures following, to wit:

Circuit Court of the United States.

HAMILTON D. LOCKWOOD
vs.
DAVID B. MOREY *et al.* } In equity.

DISTRICT OF MASSACHUSETTS, *ss:*

Exceptions taken by the complainant to the report of George S. Hillard, esquire, one of the master's of this court, to whom the said cause stands referred, made in performance of a decree made in the hearing of the said cause, bearing date the 15th November, 1866.

1st exception. For that the said master hath, in and by his said report, allowed to the said defendants, by way of deduction from their receipts for sales of syringes infringing the complainant's patent, the sum of four hundred and seventy-five dollars ($475) for wear and tear of the machinery and tools employed in manufacturing the said syringes, such amount, as the report shows, being not an actual outlay charged on defendants' books, but an estimate of the amount to which said machinery would be depreciated in such work during such time.

2d exception. For that the said master hath, in and by his said report, allowed to the defendants, Morey and Smith, by way
12*o* of deduction as aforesaid, each the sum of twelve hundred dollars for his time bestowed upon the business of manufacturing and selling syringes, which manufacture and sale the court have decreed to be an infringement of the complainant's patent, and the profits from which infringement it was, by said decree, referred to the master to ascertain.

3d exception. For that the said master, in and by his said report, hath charged the defendants with only four hundred and forty-one and a half ($441\frac{1}{2}$) gross of syringes, as having been sold by them, and on which they are bound to remit to the complainants for profits, instead of four hundred and fifty-three and ninety-five one hundred and forty-fourths ($453\frac{95}{144}$) gross of syringes, so sold and to be accounted for, as he should have done upon the facts stated in his report.

Wherefore the said Hamilton D. Lockwood excepts to the said master's report, and appeals therefrom to the judgment of this honorable court.

By his solicitor.

CAUSTEN BROWNE.

12*p* On the ninth day of May, A. D. 1867, the respondents filed their exceptions to the master's report, in words and figures following, viz:

Circuit Court of the United States.

HAMILTON D. LOCKWOOD
vs.
DAVID B. MOREY *et als.* } In equity.

Exceptions taken by the defendants to the report of Geo. S. Hillard, esq., one of the masters of said court, made and filed in said cause the 18th day of April, A. D. 1867.

DISTRICT OF MASSACHUSETTS, *ss:*

I.—Exception first. The defendants except to so much of said report as disallows the claim of the defendants to the sum of fourteen hundred and fifteen dollars ($1,415,) as interest upon the capital employed in the manufacture of enema syringes, as set forth in said report, and the defendants claim that the said sum should have been allowed them by said master; and they therefore pray the court to allow the same.

II.—Exception second. The defendants except to so much of said report as disallows the claim of the defendants to the sum of thirty-seven hundred and seventy-nine 55-100 dollars ($3,779 55), for materials, machinery, syringes, syringe-metals, and boxes,
13*q* rendered useless by the decree of the court; and they pray the court to allow their said claim for said sum.

Wherefore, the defendants excepted to the said master's report, and appeal therefrom to the judgment of this honorable court.

DAVID B. MOREY.
WILLIAM C. SMITH.
F. B. RICHARDSON.

By their solicitors.

BOUTWELL & BADGER.

12*r* This cause was thence continued to this present May term, A. D. 1867, when on the fifteenth day of May the same is set down for hearing on exceptions to the master's report. On the fourteenth day of June, A. D. 1867, the following agreement is filed, namely:

United States Circuit Court, district of Massachusetts.

H. D. LOCKWOOD
vs.
D. B. MOREY *et als.* }

The exceptions of complainant and respondents are hereby waived.

CAUSTEN BROWNE,
Sol'r for Compl't.
GEO. S. BOUTWELL,
Solicitor for respondents.

And the following decree is entered, namely :

Upon the coming in of the master's report, and on motion of the complainant's counsel, it is ordered and decreed by the court that the said report be confirmed and established, and that the said defendants, David B. Morey, William C. Smith, and Francis B. Rich-
12*s* ardson, and their agents and servants, be perpetually enjoined from making, using, or vending to others to be used, any one or more syringes substantially the same in construction and mode of operation as the syringes described in the re-issue letters patent in the said bill of complaint mentioned.

And the court doth further order and decree, that the said defendants, David B. Morey, William C. Smith, and Francis B. Richardson, do forthwith pay unto the said complainant, Lockwood the sum of eleven thousand eight hundred and twenty dollars and seventy-five cents, being the amount of profit found by the said master's report to have been received by the said David B. Morey, William C. Smith, and Francis B. Richardson, mentioned in the said bill of complaint, from the sale of syringes substantially the same in construction and mode of operation as the syringes described in the said re-issue
12*t* letters patent, in violation of the exclusive right of the complainant secured to him by the letters aforesaid, together with interest upon the said amount from the day of the date of decree to this day, amounting to four hundred and twenty-three dollars and seventy-two cents.

And the court doth further order and decree that the said defendants, Morey, Smith, and Richardson, do pay to the said complainant, Lockwood, the costs of this suit, taxed at nineteen hundred sixty-four dollars ninety-four cents.

From this decree the defendants, David B. Morey, William C. Smith, and Francis B. Richardson, in open court, claim an appeal to the Supreme Court of the United States, to be holden at Washington, the present seat of the national government, on the first Monday of December next, which appeal is allowed by the court; and the said defendants give good and sufficient security to prosecute their said appeal to effect, and to answer all damages and costs if they
12*u* fail to make good their said appeal, which security is approved by the court.

A true record.

Attest: JOHN G. STETSON, *Clerk.*

At the hearing of said cause the following evidence was used, namely :

13

14 *Original Patent.—No.* 16,956.

THE UNITED STATES OF AMERICA.

To all whom these letters patent shall come:

Whereas Charles H. Davidson, of Charlestown, Mass., and Herman E. Davidson, of Gloucester, Mass., have alleged that they have invented a new and useful improved enema syringe,

(they having assigned their right, title, and interest in said syringe to Charles H. Davidson, aforesaid,) which they state has not been known or used before their application; have made oath that they are citizens of the United States, that they do verily believe that they are the original and first inventors or discoverers of the said syringe, and that the same has not, to the best of their knowledge and belief, been previously known or used; have paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said syringe, and praying that a patent may be granted for that purpose.

These are therefore to grant, according to law, to the said Charles H. Davidson, his heirs, administrators, or assigns, for the term of fourteen years from the thirty-first day of March, one thousand eight hundred and fifty-seven, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said syringe, a description wherof is given in the words of the said Davidson in the schedule hereunto annexed, and is made part of these presents.

15 In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

{ Seal of the Patent Office. }

Given under my hand at the city of Washington this thirty-first day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-first.

JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

C. MASON,
Commissioner of Patents.

The Schedule referred to in these Letters Patent, and making part of the same.

To whom it may concern:

Be it known that we, Charles H. Davidson, of Charlestown, in the county of Middlesex, and Herman E. Davidson, of Gloucester, in the county of Essex, both in the State of Massachusetts, have invented a new and improved syringe, and we do hereby declare the following to be a clear, full, and exact description thereof, taken in connection with the accompanying drawing, which is a view of our improved syringe, with the valve boxes represented in section. Similar letters on the drawing refer to similar parts.

The nature of our invention consists in the combination of a hollow, elastic bulb of a prolate-spheroidal shape, with flexible tubes and metallic valve boxes containing valves arranged for the purpose of

eduction and ejection, when the elastic tubes and metallic valve boxes are attached to such an elastic bulb or sac in or nearly in its greatest axial line.

The prolate-spheroidal form of sac is the one best adapted to produce the greatest effect from the grasp of the hand, by which this instrument is operated; by so combining it with the tubes and valve boxes that they shall be in or nearly in the greatest axial line of the sac, the fluid is passed through the instrument in the most direct manner, and with the least loss of effect possible by friction.

16 To enable others skilled in the art to make and use our invention, we will proceed to describe its construction and operation.

(*A.*) is a hollow bulb, or sac, made of India rubber, or any suitable material of sufficient elasticity to recover its form when compressed; the ends of this bag or sac are coupled to long flexible tubes (*B*) (*C*) to the outer extremities of which the valve boxes (*E*) (*F*) are attached.

The valve box (*E*) contains valve, (*b*,) opening outward, and the other, (*F*,) a valve (*c*,) opening inward.

The terminations of the valve boxes may be of any shape adapted to the service required of them; the termination of the valve box (*F*) is arranged for the eduction, and that of the valve box (*E*) for the injection pipe of a pump or syringe for administering an enema.

The operation of this instrument is as follows: Immerse the end of the eduction tube in the enema, compress the bulb with the hand, which will expel the air from within; then, releasing the grasp of the hand, the bulb will recover its form by virtue of its elasticity, and the partial vacuum thus formed will be filled by the enema. Now insert the injection pipe, and repeat the operation of compressing the bulb until the required quantity of enema is administered. We prefer the spheroidal shape for the bulb, as with that shape a better effect is obtained from the grasp of the hand than from any other.

The advantages of our invention are, that its parts are all easily accessible for cleaning and repairs; any required form of injection or eduction pipe can be fitted to the instrument; any person not physically disabled can use the instrument without assistance from a second person.

To those cases where patients cannot be moved without causing them great pain, this instrument is peculiarly adapted, as its flexibility and construction allow it to be used in any position of the patient, instrument, or vessel containing the enema.

The strains or wrenching, which cannot be avoided even by the most careful operator when a rigid syringe is used, with the pain occasioned thereby to the patient, are by the use of our instrument avoided.

Having described our invention, what we claim as new, and desire to secure by letters patent of the United States, is: the combination of the prolate-spheroidal shaped elastic sac with flexible tubes

17 terminating in valve boxes containing valves arranged for the

purpose of eduction and ejection, when the sac tubes and valve boxes are in or nearly in the axial line, the whole operating together substantially in the manner and for the purpose set forth.

CHS. H. DAVIDSON.
HERMAN E. DAVIDSON.

Witnesses for C. H. D.:
J. B. CROSBY.
N. C. LOMBARD.
Witnesses for H. E. D.:
A. PRESSON.
C. HAYS.

18 *Re-issue patent.—(No. 1,940.)*

THE UNITED STATES OF AMERICA:

To all whom these letters patent shall come: Whereas, Hamilton D. Lockwood, of Charlestown, Massachussets, assignee of C. H. and H. E. Davidson, has alleged that said C. H. and H. E. Davidson invented a new and useful enema syringe (for which letters patent were issued to them, dated March 31, 1857, which letters having been surrendered by said assignee, the same have been cancelled, and new letters ordered to issue to him on an amended specification), which they stated had not been known or used before their application had made oath that they were citizens of the United States; that they did verily believe that they were the original and first inventors or discoverers of the said invention, and that the same hath not to the best of their knowledge and belief been previously known or used; said assignees having paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said invention, and praying that a patent may be granted for that purpose. These are, therefore, to grant, according to law, to the said Hamilton D. Lockwood, his heirs, administrators or assigns, for the term of fourteen years from the thirty-first day of March, one thousand eight hundred and fifty-seven, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention, a description whereof is given in the words of the said Hamilton D. Lockwood in the schedule hereunto annexed and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

[SEAL OF THE PATENT OFFICE.]

19 Given under my hand, at the city of Washington, this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and sixty-five, andof the independence of the United States of America the eighty-ninth.

J. P. USHER,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

D. P. HOLLOWAY,
Commissioner of Patents.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern: Be it known, that Charles H. Davidson, of Charlestown, in the county of Middlesex, and State of Massachussets, and Herman E. Davidson, of Gloucester, in the county of Essex, in the said State, invented jointly a new and improved syringe, of which the following, taken in connection with the accompanying drawing, is a description sufficiently clear and exact to enable those skilled in the art to practise said invention.

This invention consists in a syringe which is composed of an elastic bulb provided with two flexible tubes and a suitable valvular arrangement, all being so organized that by compressing the bulb its contents shall be expelled through one tube, while by the expansion of the bulb, consequent upon its own elasticity it will be filled with whatever fluid the salient end of the other tube is immersed in.

The invention is particularly useful and capable of universal application, in that any person may cleanse or inject any natural outlet from the body without aid from a second person, and any desired quantity of injection or enema may be administered without removal of the salient end of the injecting tube from the body, while from the flexible character of the tubes no injurious or hurtful strain is brought upon the body, which, with the vessel containing the fluid, may be in any position desired with reasonable limits.

Referring to the drawing, A denotes a hollow chamber, bulb or sac made of rubber or other suitable material, of sufficient elasticity to recover its form when compressed. The flexible tubes are denoted by B and C, the former being the outlet passage from the bulb A, and the latter the inlet passage to the bulb; these tubes are best made of rubber. The tubes B and C are provided with suitable valve boxes E and F. In E is located the delivery or outlet valve *b*, opening outward, and in F is placed the inlet or suction valve *c*, opening inward. The salient end of the tube B is to provided with terminations of such shape and material as to be adapted to the requirements of any passage to be injected; and the salient end of the tube C should be provided with a termination suited to sink in a fluid, and to admit its passage freely into the tube. Suitable coupling places denoted by *a* serve to coneect the tubes B and C, to the bulb.

The operation of this instrument is as follows: Immerse the end of the inlet tube C in the enema, compress the bulb with the hand, which will expel the air from within it through the tube B, then releasing the grasp of the hand, the bulb will recover its power by virtue of its elasticity, and the vacuum thus formed will be filled by the enema.

Now insert the salient end of the tube B in the orifice to be injected, and repeat the operation of compressing the bulb until the required quantity of injection is administered. The spheroidal shape of the bulb, as shown, is deemed preferable to any other, as it is best adapted for the grasp of the hand and easily resumes its shape after compression.

The arrangement of the bulb with its axis, as a continuation of the axes of the tubes is preferable to any other, on account of obtaining a direct flow of fluid through the instrument, and because the whole instrument readily drains itself if allowed to hang pendant from the end of tube C.

What is claimed as the invention of Charles H. & Herman E. Davidson, is a syringe having an elastic bulb or chamber, flexibles tubes, and a suitable valvular arrangement when organized, so as to operate substantially as described.

In witness whereof, I have hereunto set my hand this 9th day of February, A. D. 1865.

H. D. LOCKWOOD.

Witnesses:
J. B. CROSBY.
W. B. GLEASON,

21 *Testimony for Respondent.—Deposition of William H. Phelps.*

MONDAY, *January* 15th.

Int. 1. State your name, age, residence, and occupation.

Ans. My name is William H. Phelps; my age is fifty; residence 36 Warren street, Boston; and occupation maker of surgical instruments, trusses, and bandages, at No. 68 Tremont street, Boston.

Int. 2. State whether you have had a brother, J. W. Phelps, and if so, whether he was connected with you in business, and whether he be now living.

Ans. I had a brother of that name; he carried on the business and I tended for him. He is now dead.

Int. 3. How long ago were you and your brother engaged in the business which you have described as your own at present?

Ans. In June, 1836. I have been away two years and a-half, meanwhile. I was with Dr. Chase then, at Philadelphia, in the same business, with the exception of surgical instruments; we didn't make those, but instruments for deformities—trusses and bandages.

Int 4. Look at defendant's Exhibit, marked A, and state whether you have seen it before; and if so, when and where for the first time. [Said Fxhibit is marked A by the commissioner, and hereto annexed.]

Ans. I have seen it before at No. 25 Tremont street, Boston, in 1852.

Int. 5. State what it is, and whether or not your brother had that, among others like it, in your business at that time.

Ans. That is what we sold, called an injection tube or syringe, and had others similar at that time.

Int. 6. State whether your brother was a physician; and if so, whether he used in his practice syringes like Exhibit A.

22 Ans. He never took his diploma, but he attended the lectures here—the courses; he never practised any only with bandages, trusses, and surgical instruments; that was his business as a common practitioner. He never used syringes like Exhibit A. He did not practise.

Int. 7. State whether or not you sold a syringe like Exhibit A to Charles H. Davidson and Hermann E. Davidson, or either of them, in 1852.

Ans. My brother sold one to one of the Davidsons in 1852. I made the change. He gave me a five dollar bill, and I went out and got the change and gave him back three dollars; two dollars was the price.

Int. 8. Look at defendants' Exhibits "B" and "C," and state what they are, and whether you have seen them before; and if so, when and where for the first time. [The exhibits are marked B and C by the commissioner, and are annexed to this deposition.]

Ans. Exhibit "B" I have seen before at No. 68 Tremont street, in the year 1852. Exhibit "C" I don't know as I have seen before, but I have similar at the same time. We sold them for syringes for injecting.

Int. 9. How do you fix the date of 1852 as the time when you sold these syringes marked A, B, and C?

Ans. I was married the first of August, 1852. My brother moved into No. 68 Tremont street in November, 1851. I fix it by these dates.

Int. 10. Did you sell these syringes before you were married?

(Objected to.)

Ans. Yes, sir.

Int. 11. State the principal parts of the syringe marked A, and how this syringe operates in use.

Ans. The principal parts of syring eA has a bulb in the centre with two flexible tubes at each end, with suitable valves for ejecting and receiving any fluid which you might want to use by compression of the hand. It operates by the compression of the hand.

Int. 12. State, if you know, where your brother obtained the syringes like A, B, and C.

Ans. In New York, of Frederick Liese.

23 *Cross-examination*

By Causten Browne, esq., in behalf of the plaintiff:

Cross-int. 1. When did your brother, Dr. Phelps, die?

Ans. Five years the 25th of last June.

Cross-int. 2. Have you ever sold any syringes having an elastic bulb and a flexible induction tube, and a flexible eduction tube with a suitable valve apparatus, since the 31st of March, 1857?

Ans. I have.

Cross-int. 3. Alone, or in company with any one; and with whom?

Ans. I have sold them for my brother, and I have sold them for myself.

Cross-int. 4. When did you cease selling them?

Ans. Three weeks ago I sold one.

Cross-int. 5. Is that the last one you sold?

Ans. That's the last one that I sold.

Cross-int. 6. How many have been sold out of your shop, as nearly as you can state, since April 25th, 1865?

Ans. I could'nt say positive, because I buy for cash and sell for cash.

Cross-int. 7. State as nearly as you can from memory.

Ans. It may be half a dozen to ten—six to ten.

Cross-int. 8. Do you remember that there were not more than ten?

Ans. I could'nt say.

Cross-int. 9. Do you remember that there were not more than twenty?

Ans. Less.

Cross-int. 10. Have you any now on hand?

Ans. Three or four.

Cross-int. 11. Of whom have you bought these syringes so sold since the 25th April, 1865?

Ans. Bought them of a man of Essex—Essex syringe is what I bought.

Cross-int. 12. What Essex? where does he live, and where does he carry on business?

Ans. Well, sir, that I am unable to say.

24 Cross-int. 13. You mean that you know neither his Christian name nor his place of residence, nor his place of business?

Ans. I do not know his Christian name nor his place of residence. They say they are made at Newport, R. I. The man that I buy them of says his name is Essex. I take no receipts, therefore I have no knowledge of his name.

Cross-int. Did he peddle them to you in Boston?

Ans. He comes round about once a month to sell syringes to me. Sometimes it may be two months. I don't always buy of him every time he comes, because I have not sold a great many.

Cross-int. 15. On these occasions has he brought with him the aforementioned syringes which you have bought since April 25, 1865, or has he taken your order and sent them to you afterwards?

Ans. I have bought one dozen since April 25th, 1865. He always fetched them with him. I never gave him no orders.

Cross-int. 16. Is he the only man of whom you have bought such syringes since April 25th, 1865?

Ans. Of the elastic kind of syringes.

Cross-int. 17. Is he the only man of whom you have bought, since April 24, 1865, syringes having an elastic bulb and flexible induction, and eduction tubes furnished with valves?

Ans. He is.

Cross-int. 18. Have you sold any syringes since that, except those furnished you by him?

Ans. No, sir.

Cross-int. 19. What price have you paid him for the syringes you bought from him, since that date, of the kind mentioned?

Ans. Fifteen dollars and a half a dozen.

Cross-int. 20. Has Essex supplied you with these syringes on his own account, or in connection with any other party? and if so, whom?

Ans. I could'nt say.

Cross-int. 21. Is there any business connection between Essex and Thomas Lewis, who advertises himself as a manufacturer of elastic syringes in this city?

Ans. Not to my knowledge.

Cross-int. 22. When did you take possession of the premises, 68 Tremont street?

25 Ans. Two years ago the 10th of last September.

Cross-int. 23. Did your brother occupy that place from November, 1851, to his death?

Ans. He did.

Cross-int. 24. Were you connected with him, or employed by him, in business in that place, during the whole of that time? if not, during what part of it?

Ans. I was employed by him, with the exception of a few weeks leisure that I was away, a week at a time, at different times, at that place during the whole time.

Cross-int. 25. How many syringes in all, like Exhibit A, did your brother have in his shop, to your knowledge, during that time?

Ans. He had a dozen the first lot he got; he had half a dozen the next lot he had; that was all I remember.

Cross-int. 26. When did he get the second lot?

Ans. In 1853.

Cross-int. 27. What time in 1853?

Ans. I couldn't say positively. In the spring of 1853.

Cross-int. 28. Did he get those also from Frederic Liese?

Ans. He did.

Cross-int. 29. Were these lots shipped from New York upon your brother's order, or peddled to him here in Boston?

Ans. He went on to New York, and bought them there and fetched them on—it was an exchange of goods—that was the way he used to trade with him.

Cross-int. 30. Is there any entry on your brother's books which will show the date of the purchase of that first lot?

Ans. Not to my knowledge.

Cross-int. 31. Are there any books of his business for the years 1852, 1853, and 1854 in existence?

Ans. He did not keep a regular set of books in 1851, 1852, and 1853; there may be some in 1854.

Cross-int. 32. Where are the books which he may have kept in 1854?

Ans. With Aurelius D. Parker, 20 Court street.

Cross-int. 33. How came they in his custody?

Ans. He had the settling of the estate.

26 Cross-int. 34. Is there not, to your knowledge, any book or bill, or memorandum of any kind, kept or made in 1852 or 1853, showing your brother's purchases and sales of the syringes you have mentioned, like Exhibit A?

Ans. He never took any receipt when he exchanged goods; he merely put the prices down on some memorandum of paper, and since his decease the papers, the receipts, and letters have all been de-

stroyed—not all, but the principal part of them. I don't know but what Parker may have a few of the later ones.

Cross-int. 35. Do you remember the date, the name of the customer, and the circumstances of the sale in the case of any of the other eleven, of that first lot of syringes like Exhibit A?

Ans. I don't remember the name, nor I don't remember the date exactly, at the time of sale. I sold one in June or July, 1852, to a common sized man—the size of Mr. Lewis, perhaps. I remember him more distinctly than any other customer, as he came in four or five times to look at them. Then he came in and bought one of my brother. Gave him five dollars. As we had no small bills, I went out to the next door and got it changed—gave him three dollars and put the two in the drawer. After he was gone I made the remark to my brother (counsel for complainant objects to testimony of the conversation) that he was a long time making up his mind—he had been in a number of times looking at them. Some two years afterwards we had syringes and they were called Davidson's syringe, and he was the man that had bought that syringe.

Cross-int. 36. What I asked you was, whether you could state the time, the name of the customer and circumstances of the sale in the case of any one of the other eleven of that first lot syringes like Exhibit A. If you can, please do so. If you cannot, please say so.

Ans. I did not understand that he asked me about the eleven. He asked me if I remembered any one syringe. The one that I described was the one I remembered more particularly under those circumstances. Any one of the others I don't remember. No one of my acquainance, or that I knew at the time.

Cross-int. 37. Who furnished you with the Davidson syringes, as you called them, which you had about two years after the transaction which you described as having occurred in 1852?

27 Ans. The same man that bought the syringe A came in with them; I don't know whether we bought some of him the first time or the time after, and a man by the name of Essex, a short man, we had some of. He said his name was Essex—I don't know. I have not seen him for some years—for six or seven. My brother bought some of both at different times.

Cross-int. 38. Had you bought syringes of more than one man named Essex?

Ans. Only one; that is, they said his name was Essex. I have no knowledge of his name as I have never seen it written.

Cross-int. 39. Which of the two statements you have made is true; the statement that you have not seen Essex for six or seven years, or the statement that you have bought a dozen syringes of Essex, brought in by himself, since April, 1865?

Ans. I mean the Essex that my brother bought syringes of—or they said his name was Essex. The man that I buy of is a different man from the man my brother bought of as was called Essex. I mean him I haven't seen for five or six years. He was a thicker set man than the one I buy of; at any rate, I don't buy of the man my brother bought of that I used to consider as Essex, or had that impression.

Cross-int. 40. How many Davidson syringes did you or your brother buy of Davidson the first time?

Ans. I couldn't say whether it was half a dozen or a dozen.

Cross-int. 41. Did he bring them himself to your shop and sell them there?

Ans. He did.

Cross-int. 42. Did he give any bill of them?

Ans. He did not. When we buy and pay cash we take no bills; that's the way my brother had done business.

Cross-int. 43. What did your brother pay Davidson for these syringes?

Ans. I think it was twenty-one dollars a dozen. I won't be positive.

Cross-int. 44. Did your brother buy more of him of those syringes, from time to time?

Ans. I don't know that he did of him. We bought of this man that we called Essex, and Dr. Mattson.

28 Cross-int 45. Haue you a pretty clear recollection of the syringes that Davidson first brought in of the first lot?

Ans. I have.

Cross-int. 46. Please describe them as particularly as you can?

Ans. It was the same shape and form as Exhibit A; it was smoother; didn't have the ridge in the centre of the bulb, had suitable valves for injecting, had a small tube, did not have one like Exhibit A, and had a small tube made of metal for vaginal injection.

Cross-int. 47. Except the differences you have mentioned in the form of the bulb and size and material of the vaginal tube, were the syringes so brought in and sold to your brother by Davidson like Exhibit A in all respects—supposing Exhibit A to be furnished with flexible induction and eduction tubes?

Ans. The couplings were not the same—were different; with that exception it was similar to the Exhibit A.

Cross-int 48. Please describe particularly the difference in the couplings?

Ans. One was screwed on, the other was'nt.

Cross-int. 49. Which is screwed on?

Ans. Davidson's.

Cross-int. 50. And how do you described the coupling shown in Exhibit A?

Ans. That is made of brass and the rubber is pressed into it, as I understand it, to hold the tube and bulbs together. Davidson's was made of metal—platina, I suppose, or some substance of that kind—white metal.

Cross-int. 51. Do you mean that Davidson's metal was in two parts, one screwing into the other?

Ans. All that I saw.

Cross-int. 52. Do you mean one of those parts attached to the end of the bulb and the other attached to the inner end of the flexible tube?

Ans. Some was attached to the bulb and some attached to the end

of the tube. I couldn't say whether they were all attached to the bulb or all to the end of the tube.

Cross-int. 53. Did they all have the bulb and the flexible tube connected together in some way by a metal screw?

29 Ans. I couldn't say whether they were all that way or not; there were so many different syringes that have different couplings, some without screws, some with screws; but most of Davidson's had metal screws that we had for sale.

Cross-int. 54. Have all of Davidson's that you have had, had the bulb and the flexible tubes connected by metal couplings of some kind?

Ans. I think they were. I don't know but there may be some ivory, for I have had ivory tubes for injection that I got of Davidson or of Essex—that my brother did—at my store now.

Cross-int. 55. How do you know that from the time of the purchase of the syringes like Exhibit A to the time when Davidson came into your brother's shop with his syringes and sold the first lot of them to him, was about two years?

Ans. I have no definite time to go by, but should judge it was some two years after. I know it was a long time, or appeared so to me at that time.

Cross-int. 56. Was the Essex of whom your brother bought Davidson syringes a partner of, or connected with Davidson in the business at the time when such purchases were made?

Ans. I couldn't say as to the first time, but the impression that I had afterwards was that he was partner, or connected in some way. I am not positive, or have nothing to tell me so.

Cross-int. 57. Is there any book or memorandum of any kind, showing the time when your brother bought the first lot of syringes of Davidson?

Ans. Not that I know of.

Cross-int. 58. (De bene esse.) How do you know that the sale of a syringe like Exhibit A by your brother to the person whom you say was Davidson, took place before you married?

Ans. As there was so little sale for those articles at that time, I think that was about the first that was sold, and that occurred before my marriage, some five or six weeks, I should think. I have no particular date to go by. Syringes then in use were the common platina plungers—what we used to call the plunger syringes; those sold more readily than this rubber syringe, as the people were not acquainted with the rubber, and they were with the plunger.

30 Cross-int. 59. I think you said your brother bought two lots, all told, of the Liese syringe, like Exhibit A. Were they all sold by him?

Ans. He bought two lots; they were not all sold.

Cross-int. 60. How many were sold first and last?

Ans. I couldn't say; we had them round the store. After other syringes came up we throwed those by. This one before me, Exhibit A, was one that was lying round in my store.

Cross-int. 61. What syringes do you mean by the other syringes that came up?

Ans. Dr. Mattson's, for one; Lewis's, for another; Morey & Smith's, for another; Essex, for another; Davidson's and Essex, both.

Cross-int. 62. How early did the first of these syringes that you have just mentioned come up?

Ans. I don't know as I have any particular date to go by; somewhere from 1855 to 1858; they all sprung up about that time. Mattson's was the first.

Cross-int. 63. About how much time was there between the date of your brother's first purchase of syringes from Frederic Liese, like Exhibit A, and his second purchase of such syringes?

Ans. About a year and a half. I have no particular date to go by; it was the next summer; it may have run into the fall—summer or autumn.

Cross-int. 64. You mean that the second purchase from Mr. Liese was in the summer or fall of 1853 or 1854?

Ans. Of 1853.

Cross-int. 65. You say you couldn't say how many of these Liese syringes, so bought by your brother, were sold first and last. Please state how many were sold, as nearly as you can, and give the name of any person who bought any other one of them, and all the facts you can remember about his purchase of it.

Ans. There may have been eleven or fifteen; I have no particular knowledge of how many were sold. I know they were not all sold when he bought the second lot. I know there were quite a number of different kind of syringes lying about the store. I have no knowledge of any one. I am acquainted with no one; they appeared to be strangers to me at the time.

31 Cross-int. 66. Will you swear that as many as five of these Liese syringes were, to your knowledge, sold by your brother or in his shop?

Ans. They were sold or given away—over ten.

Cross-int. 67. Will you swear that as many as five were sold?

Ans. I have no dates that I can go by.

Cross-int. 68. It is not a question of dates. Will you swear that as many as five were sold?

Ans. There were over ten disposed of, and probably they were all sold; but I couldn't swear that they were all sold, because I didn't sell them all. In fact I don't know as I sold five.

Cross-int. 69. How many were given away?

Ans.. I couldn't say how many. My brother was in the habit of giving away instruments to his friends, and sometimes to poor people that came in. He may not have given away any.

Cross-int. 70. Do I understand you to mean that the reason why you think the sale of the syringe like Exhibit A to the person whom you say was Davidson, took place before your marriage is, that there was little sale for those articles at that time?

Ans. According to my knowledge, as to the sales of syringes at my brother's place. Outside of that I know very little about the sale of instruments.

Cross-int. 71. Do you mean that your knowledge of the demand

for such articles was chiefly confined to the sales at your brother's place?

Ans. I do.

Cross-int. 72. Have you stated the only fact or facts you have to give that enable you to swear that the sale of the Liese syringe to the person you call Davidson, was before your marriage?

Ans. With the connection of moving into the store from 64 to 68 Tremont street, we got a larger assortment of surgical instruments, syringes and dental instruments to supply the trade; and syringes were one of those articles we kept, more particularly.

Cross-int. 73. Did you have any other kind of syringes on hand in 1852? If so, what kinds?

Ans. What is called the plunger syringe, with the barrel or plunger, common syringe used.

32 Cross-int. 75. What other persons were employed in your brother's place, in 1852 and 1853, besides yourself?

Ans. Three or four women and three or four men; they worked in the workshop or manufactory, now in the store.

Cross-int. 76. Now please to state, as nearly as you can, the time when Davidson and the time when Essex made his first sale of rubber syringes to your brother, and give the reasons why you name that time.

Ans. The time was some two years or two and a half after I sold Davidson that syringe—some time in 1854 to 1855. I have no dates and couldn't state precisely, only from memory. It was some year afterward before I remember seeing Essex; or recollecting, it might have been before or it might have been after. It might not have been six months.

W. H. PHELPS.

Deposition of Calvin Ellis.

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is Calvin Ellis; my age, thirty-nine; my residence is 114 Bozlston street, Boston; occupation, that of physician.

Int. 2. Look at the defendant's exhibit marked "D," and state whether you have seen it before, and if so, when and where for the first time. (Said exhibit is marked "D" by the commissioner, and hereto annexed.)

Ans. I first saw this in Liverpool—(objected to)—every part of this instrument except the India rubber smaller tubes, which have replaced others of a similar character. It was in September, 1852.

Int. 3. State whether or not you purchased that syringe marked "D" at the time named when you first saw it; and if so, whether you brought it to the United States of America, and when and where.

Ans. I did purchase it at that time, and brought it with me in the steamer that sailed the following day for Boston, in the United States of America.

Int. 4. State when the steamer arrived, as nearly as you can recol-

lect, and what use, if any, you have since made of the syringe marked "D."

33 Ans. The steamer arrived some time in September, 1852. It has been used principally—I have lent it a number of times—as a common enema syringe. It has been used for that purpose. It has been used in my practice.

Int. 5. Name the principal parts of which the syringe is composed, and its mode of operation in use.

Ans. There is an elastic barrel of sufficient strength to recover its original position after being compressed; connected with this are two India rubber tubes, at the extremity of one of which is a metal tube, which is to be placed in any liquid intended for use; at the extremity of the other, a tube intended for insertion into any part into which the injection is to be thrown. I suppose there are some valves which regulate the flow of fluid, which is drawn in and expelled by pressure on, and the recoil of, the barrel first described.

Int. 6. State whether or not said syringe has answered a good practical purpose in use in your profession.

A. Yes.

Int. 7. State whether or not you ever showed said syringe to Charles H. Davidson, of Charlestown, or Hermann E. Davidson, of Gloucester; and if so, when, as near as you can recollect.

Ans. I showed the syringe to a Dr. Davidson, of Gloucester, at some time during the winter after my return—the winter of 1852–1853.

Cross-examination

By Causten Browne, esq., counsel for complainant:

Cross-int. 1. Have you ever used in your practice any syringe having flexible tubes for the induction and delivery of the enema, and a sack or bulb consisting entirely of India rubber, the compression and release of which produced the flow of the enema?

Ans. I think I have had such used by my patients.

Cross-int. 2. How many syringes constructed like Exhibit "D" have you known to be in use since you brought Exhibit "D" to the United States?

Ans. I don't know of any; that is the only one that I know to have been used.

34 [The name of Calvin Ellis is added to the list of persons in defendant's answer having a prior knowledge of the invention claimed by the plaintiff, with the plaintiff's consent.—W. W. Jr.]

(Signed) CALVIN ELLIS.

Deposition of Luther Parks, jr.

JANUARY 23, 1866.

Int. 1. Please state your name, age, residence and occupation.

Ans. My name is Luther Parks, jr.; age is forty-two years; residence, Boston, Mass. I am a physician.

Int. 2. Please state when, first and where, you saw a syringe having an elastic bulb and two flexible tubes with suitable valvular arrange-

ments. Give a description of such syringe and its mode of operation.

Ans. The first time that I saw the syringe was in the hands of my friend, Dr. Ellis. It couldn't have been earlier than the first of January, 1852, nor later than the middle of 1853. It was either abroad, where I met him, or soon after our return, and in Boston. I remember distinctly it had a tube for suction not unlike that in Exhibit "D," and a tube for delivery not unlike that in same exhibit. The shape of the central portion I wont swear to positively, whether it was globular or cylindrical, but I confidently believe it to have been cylindrical like Exhibit "D." It operated by compressing with the hand to expel the air first; then by allowing it to expand to suck in the water; then by compressing to drive the water through the delivery tube.

Int. 3. State whether or not you have used in your practice, or seen used by others, a syringe like, or substantially like, Exhibit "D." If so, how early, as nearly as near as you can fix the date?

Ans. I have used an instrument substantially like Exhibit "D." I cannot entertain a reasonable doubt that I was familiar with such an instrument twelve years ago. I used one in my practice many years ago, but I can't swear how many.

35 *Cross-examination.*

Cross-int. 1. As to this instrument with which you say you were familiar twelve years ago, and which you consider to be substantially like syringe marked "D," if it differed from that syringe in any particular of form or arrangement, please to state in what particular.

Ans. I cannot remember any difference, unless it were in this central portion—I don't know what to call it—which might have been globular.

Cross-int. 2. When you speak of being familiar with such an instrument at such a time, do you mean that you had it in use in your own practice at that time?

Ans. I do not swear to that; it may have been in my own practice, or exhibited by other physicians, at societies, for instance, or at surgical instrument makers, or all.

Cross-int. 3. Do you know that you ever used, in your own practice, a syringe having the central portion cylindrical with metal or other inflexible heads, like Exhibit "D"?

Ans. I cannot swear so particularly; that is, as to the details of construction.

Cross-inst. 4. Do you know that you ever saw, with the exception of Dr. Ellis's syringe, such a syringe as I have just described, either in shops for sale, or as an exhibit at society meetings, or as in use by any other physician, since the time that you saw Dr. Ellis?

Ans. Your minuteness of detail in the matter of construction prevents me from saying yes.

Cross-int. 5. Can you say where it was that you saw the instrument with which you say you have been familiar twelve years?

Ans. In Boston.

Cross-int. 6. Where, in Boston, and under what circumstances?

Ans. I do not remember where, but as to the circumstances, at the bedside of patients.

Cross-int. 7. In a few instances, or in many?

Ans. I can only swear to the plural number in the matter of instances.

Cross-int. 8. And whether the instrument you have so
36 known to be used as long ago as twelve years had the central portion cylindrical with metal or other inflexible heads, or whether the central portion was oval in shape without such inflexible heads, you are not able to state, if I understand you?

Ans. You are right as to my not being able to state those points of construction, and I do not swear to certain knowledge of its having been used in medical practice twelve years.

LUTHER PARKS, Jr.

Deposition of Theodore Metcalf.

JANUARY 23*d*.

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is Theodore Metcalf; age, 53; my residence is 31 Hancock street, Boston; and my occupation that of apothecary.

Int. 2. When first, and where, did you see a syringe having an elastic bulb and two flexible tubes, with suitable valvular arrangements? Give a description of such syringe, and its mode of operation.

Ans. Early in 1855. There were two syringes of the form described as part of the stock purchased by me of Mr. Burnett, shop-worn, consisting of a barrel some five inches in length and an inch and a quarter in diameter, and a head, I do not remember whether metallic or not, but of different material from the barrel or body. It was precisely like Exhibit C, except the material was of a greenish cloth. I do not remember whether the valves were at the head of the barrel or at the extremities of the pipes. It acted by compressing the barrel with the hand and relaxing, throwing an interrupted stream, according to the pressure.

Int. 3. State whether or not you have kept such syringes on sale since that date, or syringes substantially like it in construction and operation,

(Objected to.)

Ans. I have sold since a syringe like it in principle, according to my ideas, a very well known syringe—Davidson's—differing from it inasmuch as it has a bulb instead of a cylinder.

37 Int. 4. State whether or not you have the books of Mr. Burnett, of whom you bought; and if yea, whether or not you have found on the books any memoranda of enema syringes purchased in England or Erance, or either of them.

(Objected to.)

Ans. I have the invoice book of Mr. Burnett, on which I find an invoice of syphon syringes, as they are called, purchased in July,

1853, at Sheffield, in England, which I cannot doubt apply to, or is the record of, the syringe heretofore spoken of.

Int. 5. State whether or not you are acquainted with enema syringes like Exhibit B; and if yea, how early you first knew them, and whether or not you have sold them in your business in Boston.

Ans. I have known these syringes for many years before the period spoken of in regard to the other syringe, but can fix no precise date as to my first knowledge of them, and sold them, after 1855, more or less for a few years.

Cross-examination.

By Causten Browne, esq., counsel for claimant:

Cross-int. 1. (De bene esse.) How many syphon syringes do you find in the invoice mentioned in your answer to the fourth interrogatory?

Ans. A quarter of a dozen. This was an invoice of a variety of surgical instruments, &c., including this quarter of a dozen.

Cross-int. 2. Did you purchase this stock, including these syphon syringes, of Mr. Burnett early in 1855?

Ans. The formal purchase was the 1st of January, 1855. The papers dated at that time; the actual transaction, perhaps, a month earlier.

Cross-int. 3. (De bene esse.) Do you know what became of the other one of three syphon syringes?

Ans. I do not.

Cross-int. 4. What has become of the two you got from Mr. Burnett?

Ans. They never were sold, because I couldn't put them in a condition that would make them valuable—gone with the rubbish of the earth—I don't know where.

Cross-int. 5. You say you do not remember whether the heads of the barrel in those syringes were of metal or not; of what other material does it seem to you they may have been?

38 Ans. Possibly they may have been of horn. I have an impression it was a dark colored substance.

Cross-int. 6. You say the body of the barrel was of a greenish cloth; can you state its material more exactly?

Ans. The covering of the body was of a greenish cloth; the body of the barrel was of vulcanized rubber as it is called, but in a state of decay, in which it had lost its elasticity greatly.

Cross-int. 7. With the exception of these two which you got from Mr. Burnett, did you ever see any syringes of that construction? I mean having a barrel with flexible sides and inflexible heads.

Ans. Since that time I have frequently seen them offered for sale.

Cross-int. 8. Where? in whose establishments?

Ans. They have been offered for sale. I have seen them in New York, and in several retail shops in Boston somewhere near that period, not recently.

Cross-int. 9. Have you had any in your store besides the two before mentioned?

Ans. I don't know that I ever have.

Cross-int. 10. Have you, since you commenced business, usually kept on hand a full stock of surgical instruments, including syringes?

Ans. I have kept a full stock of surgical instruments until within a year, and of syringes until this time.

Cross-int. 11. Have you on hand, for sale, any syringes like that marked Exhibit B?

Ans. I have none on hand for sale. I have had till recently, and think I may have now two or three very much in the condition of this.

Cross-int. 12. How long do you think it is since you have sold such a syringe as that, or known one to be sold?

Ans. I think it must certainly be eight years since I have sold one. I don't know, of my own knowledge, of any being sold like that since then.

Ceoss-int. 13. Do you sell rubber syringes of any other than Davidson's make, and have done so since April 25th, 1865?

Ans. I can't answer that positively. Certainly, before that time, I have sold Davidson's make, and Mattson's, and Lewis's. I have in my store Mattson's and the Union Rubber Company's, which
39 I presume may have been sold, though I cannot swear to it myself. I generally sell Davidson's.

Cross-int. 14. Have all the rubber syringes you have sold since they came into use a flexible bulb or sack, the compression of which discharged the enema through an eduction flexible tube, and the release of which, from compression, caused it to be charged with enema, through an induction flexible tube, the whole being provided with suitable induction and eduction valves?

Ans. The first rubber syringes with a flexible tube that I have sold had an induction tube of metal; these were Mattson's syringes. All that I have sold had elastic bulbs and flexible tubes, excepting Mattson's, above spoken of, and were provided with suitable eduction and induction valves.

Cross-int. 15. Has Mattson, since that time, made his syringes with the induction tube also flexible?

Ans. He has.

Cross-int. 16. About how much of a business have you done in these articles since their first introduction?

Ans. I sold all of Mattson's syringes for two or three years when they were first introduced. The largest number sold by me in one year was about four thousand dollars worth of Mattson's; since that time my sales have been small.

Cross-int 17. Please to state, as nearly as you can, in round numbers, how many syringes with flexible bulbs, and flexible induction and eduction tubes, and suitable valves, you have sold from the beginning?

Ans. I think the year's business of four thousand dollars would be fully equal to all the other years before and since.

Cross-int. 18. How do you account for the extraordinary business in Mattson's syringes that year?

Ans. As before stated, I had, for two or three years, the entire control of them, (this was the culminating year) after which Mattson withdrew the agency from me.

Cross-int. 19. Since you have had for sale the rubber syringes with flexible bulbs and tubes, and suitable valves, how many enema syringes of all other constructions put together have you sold?

Ans. Very few.

Cross-int. 20. How many, as nearly as you can state, of all other constructions of syringes adapted to the same purposes as the India rubber syringe mentioned?

Ans. Not one in twenty of the amount sold.

Cross-int. 21. Are the Davidson syringes, which you have sold, made with the induction and eduction tubes applied to the flexible bulb at its opposite ends?

Ans. All that I have seen have been made in that way.

Cross-int. 22. Have you had any others in your store made in that way, and not of Davidson's make?

Ans. Made exactly in that way, I think, by the Union Rubber Company, and also of Mattson's made in the same way essentially. Those are all I think of. I may possible have had one or two of Lewis's; I am not positive about that; I never or rarely sell them.

Cross-int. 23. What is your opinion of the practical advantages in use of the syringes like that marked "D," as compared with the syringes having the flexible bulb or sack, and the flexible induction and eduction tubes provided with valves, being the syringes in which you have dealt now for some years?

Ans. I think Exhibit "D" has no advantages over the other.

Cross-int. 24. What, if any practical disadvantages has it, as compared with the others?

Ans. It is not so easily grasped and compressed, and it also has an increased number of joints, if I may so express it, subject to leak or get out of order.

Cross-int. 25. Is the action of such a rubber barrel as is shown in Exhibit "D," with the metal heads, as efficient or as enduring as that of the flexible bulb or sack in the rubber syringes you sell?

Ans. Certainly not so efficient; the matter of endurance is a matter of experience and not of opinion; the same quality of rubber might make it equally durable. THEODORE METCALF.

Deposition of Joseph Burnett.

FRIDAY, *Jan.* 26, 1866.

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is Joseph Burnett; my age is 45; residence, Southboro', Mass.; and occupation, a manufacturer of chemicals, &c.

Int. 2. Please to state whether or not you were at any time in business as an apothecary on Tremont street, Boston; and if yea, for how long a period.

Ans. As proprietor, for 10 years, at what was then No. 33 Tremont Row; it is now 39 Tremont street, I think.

Int. 3. State, if you know, who was your successor in that place, and the time when he succeeded you.

Ans. Theodore Metcalf & Co. were my successors. I sold out to them January 1, 1855.

Int. 4. Look at defendant's Exhibit "D," and state whether or not you have seen enema syringes similar to it before; and if yea, when and where for the first time.

Ans. I have seen this instrument—that is, something similar to it—before. I saw it in Sheffield, England, in the summer of 1853. I cannot say whether I had seen one before that or not.

Int. 5. State whether or not you brought instruments like that to the United States at or about that time; and if yea, to what part, and give the circumstances and the number, as nearly as you can.

Ans. I purchased a number of instruments like this of the Messrs. Hutchinson, of Sheffield, England, and ordered them forwarded to Boston, to my address, with other merchandise. I think the number was a quarter of a dozen.

Int. 6. State whether or not said syringes were received by you in Boston; and if yea, what was done with them, as far as you know.

Ans. They were received at my place of business in the fall of 1853 and offered for sale. I can't remember whether they were sold or what became of them.

Int. 7. Look at defendants' Exhibit "B" and state whether or not you have seen instruments similar to that before; and if yea, when and where for the first time.

42 Ans. I have seen an instrument similar to this shown to me at my place of business many years ago. I can't say when. I remember the instrument shown to me, I think, by some young physician who had lately returned from Europe; whether it was before or after 1853, I can't state.

Int. 8. State whether or not you had in your business syringes having an elastic bulb and two flexible tubes, with suitable induction and eduction valves, differing from Exhibits "B" and "D;" and if yea, name the time when, and give a description of, such instruments, as distinctly as you are able.

Ans. I remember selling instruments with the two tubes and valves similar, with bulbs, for some time—I can't say how long—before selling out my business. That refers to Exhibit "D." I do not remember anything with the thumb valve, as it is called, like Exhibit "B," for sale. I mean I don't remember having offered them for sale. I can't state the time when these different forms of syringes was offered. I only know that they followed each other as American manufactures. I remember instruments differing in form but not in principle—that is, they operated by compression of the hand on the bulb—they were Lewis', Matson's, and I think Davidson's.

Cross-examination.

Cross-int. 1. By the first sentence of your answer to the last interrogatory, do you mean that for some time before selling out your business you sold instruments like Exhibit "D" in all respects, or do you mean instruments having tubes and valves and an elastic compression chamber of same kind as Exhibit "D" has?

Ans. Like in principle, I should say, but different somewhat in form.

Cross-int. 2. Of syringes resembling Exhibit "D" in form, did you ever have or offer for sale any but the quarter of a dozen you bought in Sheffield?

Ans. I can't say. My impression is that I only had of this exact form the quantity that I purchased myself in Sheffield.

Cross-int. 3. Were these of Mackintosh's manufacture?

Ans. I can't say.

Cross-int. 4. Now, in regard to these syringes which you say you remember selling sometime before you sold out your business,
43 and which you say differed in form from that marked "D,"—though, in your judgment, like it in principle,—were they the Mattson's, Lewis' and Davidson's syringes of which you have spoken?

Ans. Yes. (After further thought witness says,) I am inclined to think I bought the Mattson syringe of Lewis, and I did not sell Lewis' syringe prior to my selling out my business.

Cross-int. 5. Did you carry on the business of selling articles, including syringes, after you sold out to Metcalf & Co.?

Ans. Not generally. I may have, and I think I have answered some orders.

Cross-int. 6. Were your sales of Mattson's and Lewis' and Davidson's syringes before or after you sold out to Metcalf & Co.?

Ans. Mostly before, referring to Matson's and Lewis'. I do not remember to have sold Davidson's.

Cross-int. 7. Now in regard to Mattson's and Lewis', did those which you sold have the induction and eduction tubes both flexible, or did they have the eduction or delivery tube flexible and the induction or suction tube inflexible and made of metal?

Ans. I can't say positively, but I think both tubes were flexible.

Cross-int. 8. Will you, if you can, ascertain and state, in answer to this question, whether the Mattson syringes sold by you before you sold out to Metcalf & Co. had both tubes flexible, or the delivery tube flexible and the suction tube inflexible?

Ans. I will. (The witness having returned after having made an examination says,) I am unable to say.

JOSEPH BURNETT.

[The names of Luther Parks, jr., Joseph Burnett and Charles G. Putnam, of Boston, Mass., are added to the list of persons averred in defendant's answer to have had a prior knowledge of plaintiff's invention, with the consent of plaintiff. W. W. Jr.]

Direct examination of Joseph Burnett resumed.

Int. 1. In making the examination for the purpose of answering the last cross-interrogatory, state whether or not you found any enema syringes; and if so, where; and produce the same to be marked defendant's Exhibit "E."

44 Ans. I found at my old place of business, 39 Tremont street, an enema syringe with a descriptive circular, which appears to have been patented in 1854, which I here produce. [Said Exhibit is marked "E" by the Commissioner, and hereto annexed, subject to objections to the competency of descriptive circular marked "E."]

Int. 2. State whether or not you purchased and sold enema syringes while in business prior to 1855, procured from dealers in New York; and if yea, name the dealer of whom you had them, and state the kind of syringe.

Ans. I did purchase and sell enema syringes of various kinds, including Mann's pocket enema—Mackintosh's and others. I purchased them of Frederick Liese, of New York.

JOSEPH BURNETT.

Deposition of John Haskins.

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is John Haskins; my age is fifty-five; residence, Roxbury, Mass., and my occupation, India rubber manufacturing.

Int. 2. Please to state when first, and where, you saw a syringe having the central portion elastic, with two flexible tubes, and suitable valvular arrangements, and give a description of such syringe, and its mode of operation.

Ans. I recollect seeing the Mattson syringe, with a bulb, and two tubes and valves, in 1853 and 1854, I think. We made some few bulbs for him at that time. The syringe is well known as Dr. Mattson's syringe. Was in England in 1854, in June and July, in London, with directions from George W. Davis & Brother, of Boston, [objected to,] to purchase about five hundred dollars worth of anything I might choose on their account. At that time I purchased, among other things, I believe, a dozen syringes with metalled ends, and tubes at each end, similar to Exhibit "D," excepting the barrel might have been an inch shorter in those I purchased, with metallic ends, of green color, I think. It would operate the same as those do that are made to-day by squeezing the central portion; it

45 formed a vacuum, and the water rushed in, and then, by compression, it was forced out, the valve preventing its rushing back.

Int. 2. State whether or not that dozen syringes so purchased by you in England came to the United States; and if yea, to what part.

Ans. They did. They were forwarded and received by them—George W. Davis and brother.

Int. 4. State whether or not syringes like, or substantially like,

those purchased by you in England have been in the market for sale and use from that period to the present time.

(Objected to.)

Ans. I believe the same principle has been—I mean syringes containing the same principle.

Int. 5. Look at defendants' Exhibit "B," and state when you first saw one like or substantially like that, and where, and the circumstances.

(Objected to.)

Ans. I saw those as early as 1850 or 1851. I had one of them. I was keeping a store then on Washington street, and it came into my possession that year, or in 1851, the early part of the year.

Int. 6. State whether or not you had such last-mentioned instrument in your store for sale, and if you know what became of it.

Ans. I hadn't them for sale; I only had that one. I gave it to Mr. Lewis. I told him I had such a one one day, and he aked me to give it to him, and I did. That was within three or four months.

Cross-examination.

Cross-int. 1. Do you mean to be understood that as early as 1853 or 1854, the Mattson syringes were made with both the tubes flexible?

Ans. I do. I don't know that he put them into the market. I know we were making some tubes and bulbs for him, and he put them on to the metal. I don't know that they were in the market as early as that, but I suppose they were.

Cross-int. 2. Were not all the Mattson syringes that you saw as early as 1854 made with the discharge tube flexibe and the suction tube metallic and inflexible?

Ans. I believe they were.

Cross-int. 3. Do you remember about when the Mattson syringes first began to be made with both the tubes flexible?

46 Ans. I do not.

Cross-int. 4. When you were abroad, in 1854, did you go to Paris?

Ans. I did.

Cross-int. 5. Did you look about you there for novelties in the way of syringes or other articles, in Davis & Brother's line?

Ans. I had letters to different rubber manufacturers in Paris from Davis & Brother, ordering various surgical articles, and I do not remember now the article of syringes, and I do not recollect now whether I bought any syringes or not.

Cross-int. 6. Did you visit the shop of Galante & Co. while you were there?

Ans. I don't remember. I went to some half a dozen rubber manufacturers in Paris, of whom there are a great many—and some of whom Davis & Brother had been importing from before. I do not remember that firm.

Cross-int. 7. Did you go to various shops where syringes were for sale?

Ans. I don't remember that I did.

Cross-int. 8. Can you state a little nearer the time when you made bulbs for Mattson's syringes than that it was in 1853 and 1854?

Ans. I recollect that we commenced, at our factory at Roxbury, the whalebone business for Mr. Goodyear—what we call the hard gum or whalebone. Mr. Goodyear left there in the summer of 1853, and George W. Davis and Brother took hold of the factory with me in the fall of 1853, and that I commenced making bulbs and tubing for him in the winter of 1853–4. That is the way I fix it.

Cross-int. 9. The syringes which you speak of as having been in the market since 1854, containing the principle of the dozen syringes you bought for Davis & Co. in England, have been what are known as bulb syringes, have they not?

Ans. Yes.

Cross-int. 10. Have they all had, in lieu of the cylindrical rubber barrel with the square metallic heads, an oval India rubber sack, such as is used in the Davidson syringes, so called at the present time?

Ans. I believe they have.

JOHN HASKINS.

47 *Deposition of Augustus Merrick.*

JANUARY 23, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. May name is Augustus Merrick; my age is 55; residence, Boston, Mass.; and my occupation has principally been box-maker.

Int. 2. State when first, and where, did you see a syringe having an elastic bulb and two flexible tubes with suitable valvular arrangements?

Ans. I saw it in 1856, in January, at Mr. Davidson's rooms in Charlestown, at the place that he occupied in common with a gunsmith there; I forget his name. I think the first flight up stairs turning to the left. Charlestown Square, I think, it is called.

Int. 3. State the circumstances under which you saw said syringe; give a description of its parts, and state what, if anything, was said to you by Mr. Davidson at the time.

Ans. I went over for the purpose of arranging a bill. Upon entering the door I saw a glass case upon the left hand side of the door containing some specimens of syringes, and among the rest one of a larger sized bulb than any other in the glass case, having in the moulding of the bulb, apparently, a band running round it similar in size and shape to the one in Exhibit A. Being a little surprised, I asked a question in regard to it. He told me it was a French syringe, and his own improvement upon it, and better. I merely took it up and looked at it a moment and laid it down again. Having no interest in the matter, I asked no further question, merely what it was. It had two elastic tubes extending from it, and something on the end made of bone or ivory. It was similar to Exhibit D, except one of the tubes was a little longer, the suction tube I should say; the injection tube about the same.

Int. 4. What was Davidson's name, his business, and your relations to him at that time?

Ans. His name was Charles H. Davidson; he was a manufacturer of syringes. I manufactured for him boxes for those syringes.

Int. 5. State as nearly as you can the number of boxes for syringes you had made for said Davidson previous to and up to that time.

Ans. I should think somewhere from one to two thousand.
48 I have had my attention called to it only for a day or so, and have had no chance to hunt up the books, or look over any statistics.

Cross-examination.

By Causten Brown, esq., counsel for complainant:

Cross-int. 1. Can you tell by your books or papers when you commenced to make syringe boxes for Mr. Davidson?

Ans. I think I can.

Cross-int. 2. Do you know whether you were the first man that made syringe boxes for him?

Ans. Yes, sir; I was.

Cross-int. 3. State as nearly as you can from recollection when you began to make boxes for him.

Ans. It was somewhere from August to September, 1855, as near as I can recollect.

AUGUSTUS MERRICK.

Deposition of Charles G. Putnam.

JANUARY 6, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Charles G. Putnam; my age is sixty; my residence is 24 Marlboro' street, Boston; my occupation, that of physician.

Int. 2. State whether or not you are acquainted with the enema syringes having an elastic bulb, flexible tubes, and suitable valves to eject the enema.

Ans. Yes, sir.

Int. 3. State when you first had knowledge of such a syringe, and where, and whether you have used, or known of its being used, in Boston; and if you have any such syringe, please produce it to be marked defendant's Exhibit F.

Ans. The syringe that I produce here I bought in London in 1851; it was in use here in May or June of that year. The lacking part that was screwed on was a little more spherical, but essentially the same as that in Exhibit "E;" it was an elastic bag.

Int. 4. State whether or not such syringes have been in use in your profession in Boston since May or June, 1851.

49 Ans. I can't say how many; I have myself some five or six, which have been used by my patients.

Int. 5. Look at defendant's Exhibits A, B, C, D, and E. State whether you have seen such syringes before; and if yea, when and where for the first time, as nearly as you can remember.

(Objected to.)

Ans. I think the first one I saw was Exhibit "C," which I saw here upon Dr. Channing's return—I think in 1852—in Dr. Channing's possession; as to the others I can't say when I first saw them.

Int. 6. State whether you are acquainted with Charles H. or Hermann E. Davidson, of Charlestown or Gloucester, Mass.; and if yea, whether you have bought or used any syringes of their make.

Ans. I have bought syringes at their establishment in Charlestown. I think the Mr. Davidson I saw there is not living. I think he died some years ago; which of the two it was I do not know.

Int. 7. State how early you first had knowledge of the Davidson syringe, as nearly as you can remember.

Ans. I don't know that I can give you any definite answer to that, it is so many years; perhaps I can tell by looking back.

Int. 8. Was it before or after May or June, 1851?

Ans. After—at least I have no recollection of seeing any before that time.

Int. 9. State how the syringe marked "F" was operated in use.

Ans. By an elastic bag—by exhausting the air, you draw the fluid up, and by compressing it you exclude it.

Cross-examination.

By Causten Browne, esq., Counsel for Complainant:

Cross-int. 1. On what part of the instrument was the elastic bag screwed which you speak of as having made part of the syringe marked "F" when in use?

Ans. On the perpendicular metallic stem where the screw thread is cut.

Cross-int. 2. In what was the other end of that perpendicular metallic stem inserted, or to what was it attached or applied when the instrument was in use?

Ans. It was not attached at all,—it was simply inserted into the enema which you wished to inject.

C. G. PUTNAM.

50 *Deposition of Henry F. Johnson.*

WEDNESDAY, *February* 28, 1866.

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is Henry F. Johnson; my age is 52; residence is Southboro', Mass.; and place of business here in Boston. I am a physician.

Int. 2. How long have you been a physician?

Ans. I graduated in 1839.

Int 3. State when first and where you saw a syringe having an

elastic bulb or sack, two flexible tubes, and suitable valves for receiving and ejecting fluids.

Ans. I am not certain, but think it was in Philadelphia that I first saw it, in the summer—I think in June—of 1852.

Int. 4. Give a description of the instrument you first saw; state what examination you gave to it, and describe its method of operation.

Ans. The instrument resembled Exhibit J. Its method of operation was similar to this. I examined it particularly with reference to its adaptation for a family syringe.

Int. 5. Look at Exhibit J, and state when first and where, if at all, you purchased an instrument like that?

(Objected to.)

Ans. I purchased an instrument like that in Philadelphia, in the summer or early autumn of 1852.

Int. 5. State what you did with the instrument you purchased, mentioned in the last answer.

Ans. I made use of it in my professional duties.

Int. 7. State, if you know, where that instrument now is.

Ans. I think the instrument failed, and was thrown aside as worthless. I couldn't get it repaired. Failed by a defect in the bulb, I think.

Int. 8. State for how long a time you used said instrument last-mentioned, in your practice, to the best of your recollection.

Ans. I think it failed very soon. It was used but a very short time.

Int. 9. State whether or not you have used in your practice,
51 since the time you purchased the instrument last spoken of, instruments substantially like it; and if yea, to what extent.

(Objected to.)

Ans. I have used a similar instrument whenever I could get it, and do to the present time.

Int. 10. State whether or not you procured an instrument like the one purchased in Philadelphia to take its place; and if yea, how soon after the failure of the said instrument?

(Objected to.)

Ans. I did not procure another instrument of that kind for some time.

Int. 11. State whether or not you were acquainted with Charles H. Davidson and Hermann E. Davidson, or either of them, during the years 1850, 1851, 1852, 1853, or 1854.

Ans. I don't know the given names of either. I saw a Mr. Davidson in the summer or fall of 1852.

Int. 12. State whether or not you subsequently purchased syringes of a Mr. Davidson you saw in 1852.

Ans. I did.

Int. 13. Describe such syringes, and state the name of the manufacterer, if you know.

Ans. I do not know the name of the manufacturer. The first I received were placed in my hands by the Mr. Davidson I saw, before

referred to. It was similar to Exhibit J, excepting the central bulb was smaller.

Int 14. State whether or not said Davidson claimed to be the manufacturer or inventor of said syringes.

(Objected to.)

Ans. He was the manufacturer, and, as I understood, claimed to be the inventor.

Int. 15. State whether or not said syringes were what is commonly known as the Davidson syringe.

Ans. They were.

Int. 16. State any conversation that you had with said Davidson relative to rubber syringes having an elastic bulb, two flexible tubes, and suitable valves for injecting fluids, and state when and where such conversation took place.

52 Ans. I had such conversation with him in the summer or early autumn of 1852, in Boston, at No. 1, Tremont Temple. We had a conversation with reference to the syringe marked Exhibit J being an imported article, expensive and unreliable, and the desirableness and importance of having an instrument made in America. We referred to the fact of rubber's being in America, and believed it could be manufactured here as well as in Europe or any other place. I felt confident that if it could be manufactured at a reasonable price and the article proved reliable, there would be a great demand for it. I also promised to do the best I could to introduce it, if such an article was made.

Int. 17. State whether or not you had an instrument like Exhibit J before you during said conversation?

Ans. We did.

Int. 18. State where, if you know, it was obtained?

Ans. I think it was my own instrument that I have referred to as having purchased in Philadelphia.

Int. 19. State whether or not said Davidson made any propositions to you relative to taking out a patent for such instrument; and if yea, state fully what said proposition was.

Ans. He stated his firm belief that he could manufacture the instrument free from some of the objections to the imported article better adapting it to the purposes for which a syringe was wanted, that could be afforded at a reasonable price, and he asked me if I would join him in taking out a patent. I declined having anything to do in taking out a patent. I urged very strongly the importance of manufacturing an article of this kind, and if he felt convinced that he could manufacture it I felt very anxious that he should do it. I promised to use all my influence in selling the article if he would get it up.

Int. 20. State whether or not you made any suggestion as to any improvement on the syringe like Exhibit J to said Davidson?

Ans. No further than I have alluded to—objection to the bulb and the inferior quality of the rubber. I don't recollect now, any further objection.

Int. 21. State whether or not you made a suggestion in regard to a tube for female use?

Ans. A tube like Exhibit A I had, and stated to him it was
53 objectionable for ladies' use, and a smaller tube similar to the one used in Mattson's syringe would be preferable.

Int. 22. State whether or not you had other conversations with said Davidson relative to syringes, and if yea, how many?

Ans. I saw him several times after that, but not immediately after. At one time when I saw him I recollect his stating to me he had applied for a patent.

Int. 23. State as near as you can, when he stated to you he had made application for a patent.

Ans. I cannot fix the time. I think it must have been two years after, perhaps more.

Int. 24. State whether or not he said he had applied for a patent or filed a caveat.

Ans. I have already stated that in one conversation he said he had applied for a patent; he might have spoken of it more than once. I know that he spoke of having applied for a patent.

Int. 25. State particularly how you are able to fix the date of your purchase of an instrument in Philadelphia, like Exhibit J, and of your first conversation with Davidson about such syringes.

Ans. I was taken with hemorrhage from the lungs in September, 1851, and I gave up my business, went south and spent the winter of 1851–2. I left New England election day, the early part of November. I returned from the South the last of May or first of June, stopping a few days in Philadelphia and in New York. I returned to Philadelphia the last of September, and spent about a week there. I then come home, and returned to Philadelphia with my family the week after thanksgiving, and spent the winter. Returned home from Philadelphia in the summer of 1853. I know that I purchased the instrument either before I returned home in June of '52, or when I went back in September, I am not positive which. I did not come to New England again after I moved on with my family the week after thanksgiving, in 1852, until March, 1853, and then I did not come to Boston. I merely visited my father and returned immediately to Philadelphia.

Adjourned to March 1, at 9 o'clock.

54 MARCH 1.

Int. 26. In answer to interrogatory 21st you speak of a smaller tube similar to the one used in Mattson's syringe. What do you mean by that?

Ans. I referred to the female tube in Mattson's piston syringe, manufactured and for sale at that time everywhere at the various apothecaries' shops. It was a common instrument in use at that time.

Int. 27. Whether or not there were other instruments like the one you purchased in Philadelphia, offered for sale at that place at the time you purchased?

Ans. There were.

Int. 28. Whether or not the instrument purchased by you in Philadelphia, answered a good practicable purpose up to the time you say it failed?

(Objected to.)

Ans. It did.

Int. 29. What was the cause of its failure?

(Objected to.)

Ans. I think the bulb broke.

Int. 30. State whether or not Davidson claimed to be the inventor of an elastic syringe at any time you had interviews with him prior to 1853.

Ans. He did not.

Cross-examination,

By Causten Browne, esq., on part of complainant:

Cross-int. 1. Of whom did you purchase the syringe which you say you bought in Philadelphia in the summer or early fall of 1852?

Ans. I cannot tell.

Cross-int. 2. Describe the locality?

Ans. I think it was on Chestnut street, but am not positive; it might have been on Market street.

Cross-int. 3. Do you remember any name or initials stamped anywhere upon the syringe which you bought?

Ans. I am not positive that there were any initials upon it.

Cross-int. 4. Do you remember that there was nothing—name or initials stamped upon it?

Ans. I would not say that there were or were not.

55 Cross-int. 5. Where were you in the summer and fall of 1853?

Ans. A portion of the summer I was on the beach—Hampton and Rye, New Hampshire. In autumn and winter I was in Southboro' and Worcester, Mass.

Cross-int. 6. How was it the following year—the summer and fall of 1854?

Ans. I moved on to the farm in Southboro' after the death of my father, in August, 1854, and remained there through the fall and winter most of the time.

Cross-int. 7. Have you lived there since?

Ans. I have.

Cross-int. 8. Have you occupied the same office in Boston since 1851?

Ans. I had no office in Boston in 1851.

Cross-int. 9. When did you begin to occupy the office you now have at No. 2, Tremont Temple?

Ans. I think it was in 1859.

Cross-int. 10. Did you have an office in Tremont Temple in 1852?

Ans. I did not.

Cross-int. 11. Where was your office prior to 1859?

Ans. For a short time previous I was at, I believe, 2½ Beacon street, in the Albion building.

Cross-int. 12. Prior to 1859, did you have any office or place of business in Tremont Temple?

Ans. I did. I was gone West and South after I gave up business, in consequence of hemorrhage at the lungs. The year 1851 and 1852 I returned; in 1852 spent the summer on the beach; was at Philadelphia in the fall and winter of 1852–3; spent the summer of 1853 mostly upon the beach; fall and winter at Southboro' and Worcester. I had no place of business, where I remained permanently, until late in the fall of 1854. I made arrangements with Dr. Cheever, at No. 1, Tremont Temple; had a room in his office until a few months before I went on to Beacon street, which was in 1858. I had for a few months a room in the temple, directly back of the one I occupy now, prior to my moving on to Beacon street.

56 Cross-int. 13. Had you any office in Tremont Temple at the time of the first conversation there between yourself and Davidson, as you have testified?

Ans. I had not.

Cross-int. 14. Who then occupied No. 1, Tremont Temple?

Ans. Dr. Cheever, I think.

Cross-int. 15. Did you meet Davidson there by appointment or accidentally?

Ans. 'Twas accidental.

Cross-Int. 16. Had he come there to see Dr. Cheever?

Ans. I could not tell. I happened to meet him there.

Cross-int. 17. What Dr. Cheever is it you speak of?

Ans. Joseph Cheever, now of Charlestown, I think.

Cross-int. 18. Is he an apothecary or a practising physician?

Ans. He is a practising physician, I believe.

Cross-int. 19. Had you ever met Mr. Davidson before this interview at Dr. Cheever's office?

Ans. Not to my knowledge.

Cross-int. 20. Will you state how soon after that you first met him again?

Ans. I think I met him twice within a very brief period, of a few weeks. I do not recollect seeing him again until for several years. I can't tell, for three or four years.

Cross-int. 21. When was it that he told you he had applied for his patent? Was it before or after this long period of several years?

Ans. It was after that period.

Cross-int. 22. Did the conversation between you and Mr. Davidson, in 1852, occur in the presence and hearing of Dr. Cheever?

Ans. I think there was no one present that heard it.

Cross-int. 23. Were you and Mr. Davidson introduced to one another at that time, and by whom?

Ans. We were not introduced; it was entirely accidental—our conversation.

Cross int. 24. How did you happen to fall into conversation on this subject, or any subject?

Ans. I think he asked me a question about syringes, and the kind that I most approved of in my practice.

57 Cross-int. 25. How do you suppose he knew that you were a physician?

Ans. I don't think he knew it until he asked me.

Cross-int. 26. What was the occasion of your being at Dr. Cheever's office that day?

Ans. 'Twas accidental. When I had an hour or more leisure in Boston, I used frequently to call at Dr. Burnett's, now Metcalf's, apothecary shop—Dr. Phelps', near the corner of School street, and Dr. Cheever's, generally. I mean to say I called at one or the other of those—the first and the last most commonly.

Cross-int. 27. Can you state any circumstance to explain the fact that Mr. Davidson, having called at Dr. Cheever's to see somebody else, and not knowing you, and without any introduction to you, opened a conversation with you upon the subject of syringes?

Ans. I had the syringes before me and was examining them.

Cross-int. 28. What syringes had you before you besides the Philadelphia one?

Ans. I think I was examining Dr. Mattson's, some recent improvements that he had made.

Cross-int. 29. Do you mean his piston syringe?

Ans. Yes.

Cross-int. 30. Had you kept your Philadelphia syringe at Dr. Cheever's, or had you brought it there that day?

Ans. I did not keep it there. I think I was on my way from my father's to the beach, and had that with me with other things.

Cross-int. 31. Did you on that day, or at any time before that, show that syringe to Dr. Cheever?

Ans. I think I had never showed it to him.

Cross-int. 32. If Dr. Cheever was not within hearing, was he in the office at the time of this conversation between you and Mr. Davidson?

Ans. I think he was not there, not in the office.

Cross-int. 33. Was anybody else employed there or occupying there at that time?

Ans. He had a clerk or boy in his store and office when he was out. I always found one there whenever I went in. I don't remember his name.

58 Cross-int. 34. Was it a medical office, or was it a store or store-room or counting-room, for the sale of medicines or medical supplies?

Ans. It was both; a store-room for the sale of medical supplies in front, and office in the rear.

Cross-int. 35. Do you know whether the Davidson with whom you had this conversation was Mr. Davidson or Dr. Davidson?

Ans. I never heard the man I allude to called Dr. When I first received the Davidson syringe, he stated to me that he was the man with whom I had had conversation some time before with regard to elastic syringes.

Cross-int. 36. When was it that you first got syringes from him?

Ans. I cannot tell definitely. I should think it was in 1857.

Cross-int. 37. What has become of the syringe which you say you bought in Philadelphia, in 1852, or the remains of it?

Ans. I do not know whether I have it or the relics of it or not, or whether it was thrown away. It became utterly useless.

Cross-int. 38. Will you look for it and try to find it?

Ans. I will.

Cross-int. 39. How long since you saw it, or the relics of it?

Ans. I can't tell, but think I had it among my things in Southboro' several years ago. I do not recollect having it or seeing it for several years. I think the relics of it are among my things at Southboro'.

Cross-int. 40. Are you perfectly certain that the syringe you have spoken of as having been bought by you in the summer or fall of 1852 in Philadelphia, and shown by you to Davidson at Boston, had two flexible tubes, one for admitting the enema by suction into the elastic sack, and the other for conducting the enema to the patient, when expelled, from that sack by the compression of it?

Ans. I am.

Cross-int 41. How long was each of these two flexible tubes?

Ans. I should think from twelve to sixteen or eighteen inches.

Cross-int. 42. Do you know that there were valves in it, and what kind of valves?

Ans. There were valves in it. I do no recollect the kind they were.

Cross-int. 43. Were there no working parts to this Philadelphia syringe, except the sack, the valves, and the flexible tubes?

59 Ans. If I understand the question, there were not.

Cross-int. 44. What was the appearance of the Mr. Davidson that had the conversation with you at Dr. Cheever's office, in 1852, as you say?

Ans. There was nothing so marked or striking about him that I should be able to describe his appearance at this late day.

Cross-int. 45. Was Dr. Cheever's name Joseph on John?

Ans. Joseph.

Cross-int. 46. Do you have an office in Tremont Temple only for medical practice, or for the sale of medicines or medical supplies?

Ans. Only for medical practice, and furnishing such remedies as I order my patients.

Cross-int. 47. Are you engaged in, or in any way connected with, the sale of syringes of any kind?

Ans. I am not.

Cross-int. 48. To whom did you first make known the fact of the conversation you have related between yourself and Mr. Davidson, in 1852?

(Objected to.)

Ans. I do not recollect of stating it to any one until I received those syringes from Mr. Davidson, and still I might have told Dr. Cheever of it before; I am not certain. I think I stated it to Dr.

Green, now in the same building with me, No. 2, Tremont Temple. I think now, that in 1855 I stated this conversation to a man by the name of Hicks, called Dr. Hicks, the inventor of a truss pad of rubber filled with air, which, I believe, be claimed as a patent. I met him at Dr. Cheever's, and hearing him speak of the truss pad being composed of rubber, I introduced the subject of the manufacture of rubber syringes, to ascertain if such an instrument could be made here as well or better than they could be made in Europe. This must have been before I stated it to Dr. Cheever.

Cross-int. 49. Were you in the city of Boston any part of the year 1853? and if so, what part?

Ans. I cannot tell; I occasionally came to Boston during that year.

Cross-int. 50. In what part of the year did you return from Philadelphia?

Ans. Not until hot weather, either May or June.

60 Cross-int. 51. From that time, and during that summer and fall, were you repeatedly in Boston?

Ans. I passed through Boston several times to Hampton and Rye Beach.

Cross-int. 52. From what place?

Ans. My family were in Worcester—my wife very sick—the last of June and first of July, where I remained until she was able to be carried to Hampton.

HENRY F. JOHNSON.

Deposition of William Fraser Ford.

TUESDAY, *January* 30, 1866.

Int. 1. What is your name, age, residence, and occupation?

Ans. William Fraser Ford; forty-five years of age in April next; reside at North Englewood, New Jersey; and am a surgical instrument maker.

Int. 2. How long have you been engaged in that business, and where?

Ans. Since the age of fifteen up to the present time. In the city of London up to 1848, and in New York since 1851.

Int. 3. State whether or not you are familiar with syringes having an elastic bulb, two flexible tubes, and suitable eduction and ejection valves for rising and forcing fluids.

Ans. I am.

Int. 4. State when first, and where, you had such knowledge, and describe such instrument.

Ans. In 1854 Dr. Isaiah Deck, since deceased, gave me a drawing which, unfortunately, I have lost. The annexed drawing is as near as I can recollect. This was in the city of New York.

Int. 5. State whether or not said drawing was a printed cut or otherwise.

Ans. It was a wood-cut, with a description of the use of the instruments, and where they were to be had. It was a circular.

Int. 6. State whether or not you have been requested to search for said drawing and description, and with what result.

60*a* Adjourned to May 5, 1866, when H. F. Johnson re-appeared. (Counsel for complainant objected to the re-examination of Henry F. Johnson.)

1. Re-direct int. State whether the conversation with Mr. Davidson when you shew him the Philadelphia syringe at Dr. Cheever's office, in Tremont Temple, occurred in the old or the new Tremont Temple.

Ans. In the old one.

(Signed) HENRY F. JOHNSON.

61 Ans. I have done so, and have not succeeded in finding it.

Int. 7. Give a description of the instruments, as near as you can recollect, of their different parts and mode of operation.

Ans. One of them, No. 1, from the wood cut I would suppose that the lower portion of that containing the valve was made of metal, and the upper portion was an India rubber bag, and it was called an elastic syringe. It had a long elastic tube, with glyatic tube at end. No. 2 had an elastic bag in the centre, with mounts to contain valves, and an elastic tube coming from each end of the elastic bulb; one end was for suction, and the other end to glistify. (Answer objected to after the word "suppose.") By compressing either of the rubber bags, and allowing them to open again, the elastic bag would become filled with liquid; when again pressed the liquid would pass through the end of the glistic pipe.

Int. 8. State whether or not you have had such instruments, like those last described, for sale, or seen them exposed for sale, in this country, from about the time you first had such knowledge of them to the present time.

(Objected to as hearsay.)

Ans. I have manufactured and sold such instruments as No. 1 (hereto annexed) since 1855. I can't state the date I manufactured those like No. 2. I manufactured about 1857, to the best of my belief. I would modify this on reflection. I manufactured a syringe on the same principle, about 1857, such as No. 3, (hereto annexed.) I think it was about 1857 that I had knowledge of such as No. 3 being for sale; and like No. 1 since 1854, to the best of my knowledge and belief.

Cross-examined.

By Causten Browne, esq., on the part of complainant:

Cross-int. 1. Have you manufactured syringes like that shown in your drawing, hereto annexed, marked 2, since 1857?

Ans. I have.

Cross-int. 2. Do you manufacture them still?

Ans. Some years back I manufactured largely, and I am still selling of that stock.

Cross-int. 3. When did you manufacture your last lot?

Ans. I cannot tell without reference to my book and work-

men. That stock has been on hand some three years. I have
62 manufactured some within two years.

Cross-int. 4. State, as nearly as you can from recollection, and without reference to your books and workmen, when you manufactured your last lot.

Ans. I believe about eighteen months; for Shepherd & Co. I did not deliver them, and I am not selling from them.

Cross-int. 5. State, as nearly as you can, how many you have on hand.

Ans. It is mere guess. I can't tell; I might not guess within six dozen, and those not in a finished state.

Cross-int. 6. Do you know Mr. H. D. Lockwood, now present?

Ans. I believe I have seen him in my store, No. 85 Fulton street.

Cross-int. 7. Do you remember when it was?

Ans. I should think about two years ago.

Cross-int. 8. Did he on that occasion notify you that you were infringing the Davidson syringe patent, of which he was the owner or manager?

Ans. I believe he did.

Cross-int. 9. Have you manufactured any other syringes since you stopped manufacturing those of the kind shown in your drawing marked No. 2.

Ans. Yes; I am making syringes all the time.

Cross-int. 10. Have you, since you stopped manufacturing those like your drawing No. 2, manufactured any having an elastic bulb or sack, of an oval form or thereabouts, with which there are connected two flexible tubes, one for the induction, and the other for the ejection, of the enema, and both provided with suitable valves?

Ans. No.

Cross-int. 11. Have you, since that time, manufactured any elastic syringes?

Ans. No.

Cross-int. 12. You say you manufactured a syringe such as that shown in your drawing No. 3, about 1857. How many did you manufacture?

Ans. I can't tell; there may have been two gross. There was quite a run for them; that is according to my best recollection.

63 Cross-int. 13. Can you find and produce any one of that lot?

Ans. I might, perhaps; I think Dr. Percey may have one. He resides in 38th street, New York.

Cross-int. 14. At what prices did you sell such syringes, wholesale and retail?

Ans. I think they were twelve dollars a dozen, wholesale, and two dollars at retail. They may have been eighteen dollars, and two fifty. I can't tax my mind on that.

Cross-int. 15. Are you sure that it was in the year 1857 that you manufactured them?

Ans. I am not sure, but can tell by reference to my books.

Cross-int. 16. Why did you stop manufacturing them?

Ans. Because we had a sufficient stock on hand, and our sales were small.

Cross-int. 17. Why were your sales small? You stated there was quite a run for them

Ans. We adopted syringes like those shown in the drawing marked 2; we adopted No. 2, and that being considered a better article, our sales stopped on No. 3; and also, I believe, our competitors would undersell us. Trade with us has dwindled down to nothing now.

Cross-int. 18. What sort of syringes are those which you have made since you stopped making elastic syringes?

Ans. We have, and are now, manufacturing two kinds. One is the common pewter syringe, found in all drug stores; and the other is a barrel, with pistons with valves below for rising the force of fluids and elastic tube attached.

Cross-int. 19. Where did Dr. Isaiah Deck live in 1854, and where has he lived since, if you know?

Ans. I don't recollect. He called on me at my business place at different times. Sometimes I met him in the street.

Cross-int. 20. Is he a New York city physician?

Ans. He is an analytical chemist; he was not a practising physician.

Cross-int. 21. Have you ever seen a duplicate of the sketch and description which you say he gave you since that time?

Ans. No.

W. F. FORD.

64 *Deposition of Herman Hernstein, taken before R. E. Stilwell, examiner, January* 31, 1866.

Int. 1. What is your name, age, residence, and occupation?

Ans. Herman Hernstein; age, 60; residence, 112 West Houston street; occupation, importer and manufacturer of surgical instruments and druggists' sundries, and have been in that business about twenty-four years in this country.

(Defendants produce Exhibit G, and ask that it be marked by the examiner.]

Int 2. Look at exhibit G, and state when you first saw that or instruments made after that pattern, and where?

Ans. I have bought and sold a like article on the same principle seventeen or eighteen years ago in this city. It is an imported article, French manufacture.

Int. 3. Give a description of the different parts of instruments like exhibit G, which you say you have sold; their construction, and the mode of operation.

Ans. It was constructed of an India rubber oval-shaped bulb, connected on each side with a gum-elastic tubing, provided with a valve on each side, one as the suction tube, and the other the injection part. It operates by pressing and releasing the bulb.

Int 4. State whether or not you purchased said syringes of Fred Liese; and if yea, when, as near as you can recollect, for the first time.

Ans. I did, some seventeen or eighteen years ago.

Int. 4½. State whether or not it is in your knowledge that said Liese had such instruments for public sale at that time and afterwards; and if yea, for how long a time.

Ans. I know that he had them for public sale at that time, and sometime afterwards.

Int. 5. In what place or city?

Ans. In New York city.

Int. 6. State whether or not said Liese had syringes with an elastic bulb, two flexible tubes, with suitable eduction and ejection valves, for sale, differing in any manner in form, construction, and operation from exhibit G; and if yea, describe such instruments minutely, and state the time when he had them first.

65 Ans. He had syringes like Exhibit G, and some on the same construction and principle where the bulb was perhaps a half size larger than Exhibib G. I first saw them about seventeen or eighteen years ago.

Int. 7. Is said Liese now living? and if not, when did he die?

Ans. He is not living now; to my best recollection he died in 1861.

Int. 8. State whether or not you have kept on hand for sale instruments like Exhibit G from the time you say you first purchased them of Liese to the present time.

Ans. I kept them for a number of years; until they commenced manufacturing in this country.

Cross-examined.

By Mr. Browne, counsel for complainant:

Cross-int. 1. When was the time that they first commenced manufacturing in this country instruments like Exhibit G?

Ans. To the best of my recollection, I think it is ten or twelve years ago. I am not positive; perhaps not as long as that.

Cross-int. 2. Up to that time had you bought any syringes like Exhibit G from any one except Frederick Liese or Frederic Liese & Co?

Ans. I think I bought some few, even while the domestic article was in the market, and they were preferred by Frenchmen in preference to American. I bought of no one else; he was the only importer at the time, so far as I know.

Cross-int. 3. When you so bought such syringes of him, was he doing business under the name of Frederic Liese, or of Frederic Liese & Co.?

Ans. I bought of Frederic Liese. I am not acquainted with any firm of Frederic Liese & Co. There never was any firm of Frederic Liese & Co., to my knowledge.

Cross-int. 4. Where was his place of business when you first bought such syringes of him?

Ans. I think it was 102 John street. I think it is nearly opposite Cliff street, in John street.

Cross-int. 5. What was the next place of business at which he had syringes like Exhibit G for sale?

66 Ans. To the best of my knowledge, his next place of business was in Cliff street; I can't recollect the number, I think it was 22.

Cross-int. 6. Do you remember where his next place of business was that he had syringes like Exhibit G.

Ans. I think it was 102 John street, the same place where he kept his business before he went to Cliff street. I mean that he moved back again.

Cross-int. 7. What was the next place of business where he had syringes like exhibit G for sale?

Ans. I can answer only a part of that question. His next place of business was 2 Liberty street, but I don't know if he then kept the same article for sale.

Cross-int. 8. Where was his next place of business.

Ans. I don't think he has got any place of business, he is dead; he died while he was in business at 2 Liberty street. My firm are now the successors of that establishment.

Cross-int. 9. Did you buy out Mr. Liese?

Ans. The estate of Frederic Liese was sold at public auction, and we purchased the greater portion of it.

Cross-int. 10. Have you the possession of any of the books of the business carried on by Mr. Liese?

Ans. None of his business books.

Cross-int. 11. Prior to the time when the American manufacture of syringes like Exhibit G commenced, did you buy of Mr. Liese any other elastic syringes having two flexible tubes except those which were like Exhibit G, and those which differed from it in having a somewhat larger bulb?

Ans. O, yes; a great many different kinds of elastic syringes, of various principles.

Cross-int. 12. Prior to the commencement of the American manufacture, did you buy of Mr. Liese any elastic syringes having the chamber into which the two tubes enter formed like that shown in the drawing marked 3, produced by the witness, Ford?

Ans. I am not certain. I have seen and had syringes; those which I understood were an English imported article, but I am not certain whether I bought such of Liese or somewhere else. Those
67 what I saw had a spiral spring arranged inside of the chamber, and lengthwise of it, and the chamber was compressed by compressing the springs.

Cross-int. 13. Do you remember where you saw and had these syringes with a spiral spring?

Ans. I think I first saw it forty years ago, when the first Macintosh was first invented in England. They made these syringes out of that stuff, Macintosh, and they proved to be a failure. It might have been fifty years ago.

Cross-int. 14. Do you remember how many there were in the first lot of yringes like Exhibit G, which you bought from Frederic Liese?

Ans. No, I do not; it might have been a dozen. It might have been a half a dozen; I can't recollect.

Cross-int. 15. When you bought your first lot of him like Exhibit G, did you take all he had on hand at that time?

Ans. No, sir.

Cross-int. 16. State your best recollection of the number he there had on hand left after you made your purchase.

Ans. I couldn't tell.

Cross-int. 17. Was it one or two only, or quite a number?

Ans. I couldn't say how many. According to my judgment he must have had a stock, and when I went in, in a week or two weeks, he always had them on hand when I called.

Cross-int. 18. Were they all imported articles?

Ans. Yes, sir.

Cross-int. 19. How many syringes like Ex. G do you think you bought from Mr. Frederic Liese from first to last?

Ans. It might have been fifteen dozen, and it might not have been ten dozen, I couldn't tell.

Cross-int. 20. About how long a time did you continue to get syringes like Ex. G from Mr. Leise?

Ans. Some few years after the American were in market, by some special order, I had to get the imported article, as I stated before the Frenchman always preferred the imported syringe to the American.

Cross-int. 21. Did you buy of Mr. Liese more than one lot of syringes like Ex. G before the American maufucture commenced?

Ans. O, yes; number of times.

68 Cross-int. 22. And how many such syringes in all are you willing to say you bought of him prior to the year 1854?

Ans. Well, I couldn't say with certainty how many; but the bulk was long before 1854.

Cross-int. 23. Did you buy from him as many as fifty such syringes before 1854?

Ans. Yes, sir.

Cross-int. 24. Did you buy as many as fifty before 1853?

Ans. Yes, sir, before 1852.

Cross-int. 25. Did you buy during the years 1852, 1853 and 1854, other articles, from time to time, of Mr. Liese besides these syringes?

Ans. Yes, sir.

Cross-int. 26. Are you willing to say that you bought as many as fifty of these syringes like Exhibit G in the years 1853 and 1854?

Ans. I could not say I bought more than fifty. It might have been prior to 1853 and '54, and it might have been in 1853 and '54.

Cross-int. 27. Did you buy them from him, from time to time, during all the years 1850, 1851, 1852, and 1853?

Ans. I can safely say I bought them as early as 1850, and continued buying, and even bought when the American syringe had come into the market.

Cross-int. 28. Did you, during the years 1850, '51, '52, and '53, buy from Mr. Liese any other syringes than those like Ex. G?

Ans. Yes, sir.

Cross-int. 29. What kind of syringes?

Ans. Metal and India rubber. The India rubber syringe had an

India rubber bag, with a single short inflexible tube attached, and was also provided with a flexible pipe, intended to be slipped on or in the other pipe for use by female patients.

Cross-int. 30. Did you buy from him during the years 1850, '51, '52, and '53, other articles besides syringes?

Ans. Yes, sir.

Cross-int. 31. Did you keep an account with him, or buy for cash?

Ans. Our business were cash transactions. He bought of me articles manufactured by me, and I bought imported articles of him.

Cross-int. 32. Please state, now, how many syringes like
69 Ex. G you are willing to swear you bought from Frederic Liese during the years 1850, '51, and '52?

Ans. Well, with safety, I would say fifty.

Cross-int. 33. Did Mr. Liese continue to import those syringes, from time to time, durlng the years 1850,'51. '52, 53?

Ans. I couldn't say what M. Liese done, I can say that they were always to be had there.

Cross-int. 34. Were they all, so far as you know, made by the same manufacturer abroad?

Ans. I couldn't say. My impression it that there was a stamp on the band that runs around the bulb; what it was I don't recollect. My impression is that the initials were two like letters, like G. G. or H. H., or so on, as the case might be.

Cross-int. 35. Was it H. G. & Co?

Ans. It might have been; but my impression is that the two first initials were like letters.

Cross-int. 36. How many syringes like Ex. G are you willing to say you bought from Mr. Liese during the years 1852 and 1853?

Ans. Well, I couldn't say. I could say safely that I bought in the years 1850, '51 and '52 fifty; but I could not say what I bought in 1853.

Cross-int. 37. Do you mean to say that you bought none at all in 1853?

Ans. I have no doubt that I did, but I can't swear how many.

Cross-int. 38. Have you any book or books showing your purchase of syringes from Mr. Liese during the years 1850, '51, '52. '53?

Ans. No; I guess our new books commenced in 1858 or '59 were merely balanced over, and the old books sold for old paper.

Cross-int. 39. Do you know what you paid Mr. Liese for the syringes like Exhibit G?

Ans. I think it was either twenty-four or thirty dollars a dozen, but am not sure.

Cross-int. 40. Was the price of these more or less than the price of the other syringes which you were buying about that time?

Ans. I bought syringes as high as $50, $60, and $70.

Adjourned to 12 M., the 31st inst.

70 WDENESDAY, *January* 31, 1865.

Present, counsel on both sides.

[The name Frederick Siese in the list of persons alleged in the

defendant's answers to have had prior knowledge is, by consent of the parties, changed to Frederick Liese, and the name of Herman Hernstein & Son of New York is added to said list of persons alleged to have had prior knowledge in said answer, by consent of the plaintiff.]

Cross-int. 41. How long did Mr. Liese have his place of business in Cliff street?

A number of years; I don't know how long.

Cross-int. 42. Did you do business pretty constantly with Mr. Liese from 1849 down to 1854?

Ans. Yes, sir.

Cross-int. 43. Did you go or send to his place of business every few days during that time?

Ans. Very frequently; sometimes two or three times a day, and sometimes once a week, as occasion required.

Cross-int. 44. You say that Mr. Liese had his place of business in Cliff street a number of years; can't you come any nearer than that?

Ans. I can't come any nearer.

Cross-int. 45. Why not?

Ans. I will not assert what I am not positive of.

Cross-int. 46. Why can you not be positive of the numbers of years, or about the number of years, that Mr. Liese was in Cliff street?

Ans. I have no memorandum of it.

Cross-int. 47. Can you tell the year, or about the year, when he moved to Cliff street?

Ans. I am not positive of that.

Cross-int. 48. Have you any definite recollection about it at all?

Ans. I have.

Cross-int. 49. State what recollection you have.

Ans. By being obliged to call at his place in Cliff street, instead of John street.

Cross-int. 50. But I am asking about the time when he moved to Cliff. Can you state from recollection the year when that was?

71 Ans. I could not recollect the year. I know it was between 1846 and 1860; that is all I know.

Cross-int. 51. Do you recollect the year when he moved from Cliff street back to John street, any nearer than that that was between 1846 and 1860?

Ans. I do not.

Cross-int. 52. You spoke yesterday of having had syringes with an elastic chamber, like that shown in Ford's drawing marked 3; how many such syringes do you think you had from first to last?

Ans. I don't think I gave any such testimony; I explained that I saw that shape with a spiral spring in Europe, and covered with mackintosh; but I have seen those syringes, and if I am not mistaken, they were manufactured by Wade & Ford, of this city.

Cross-int. 53. You spoke of having purchased from Mr. Liese, from time to time, India rubber syringes, having a single short inflexi-

ble tube attached, and also provided with a flexible pipe for use by female patients. How many of those syringes do you think you bought from Mr. Liese from first to last?

Ans. Quite a number; but I could not state the quantity.

Cross-int. 54. As many as a hundred, from first to last?

Ans. I would say yes.

Cross-int. 55. Do you remember when you first bought those syringes from Liese?

Ans. Yes; better than eighteen years ago.

Cross-int. 56. How do you know that?

Ans. In consequence of doing business in that line.

Cross-int. 57. Have you any books or memoranda which enable you to fix that time, or do you state it from recollection simply?

Ans. I have no books yet any more referring to that time; but my recollection is founded upon the facts that I have resided at a certain place for a certain number of years, which enables me to fix such length of time.

Cross-int. 58. Is that the fact which enables you also to fix the number of years since you first had syringes like Exhibit G from Mr. Liese?

Ans. Yes, sir; that guided me in my testimony,

Cross-int. 59. Is there any other fact, than that which
72 guides you in your testimony, as to the number of years since you first bought syringes like Exhibit G, from Mr. Liese?

Ans. Yes, sir; there is another fact, the length of time I have been in the business.

Cross-int. 60. Are those the two facts on which you reply to guide your recollection in this matter?

Ans. Besides my positive knowledge of it.

Cross-int. 61. When you say your positive knowledge, you mean your positive recollection, don't you?

Ans. Yes; certainly.

Cross-int. 62. Well, so the length of time you have occupied a certain place, and the length of time you have been in business, are the two facts which enable you to recollect positively how long it is since you first bought syringes from Mr. Liese like Exhibit G?

Ans. Yes, sir.

Cross-int. 63. What place is it you have so occupied? your place of business, or your place of residence?

Ans. I mean my place of business.

Cross-int. 64. State exactly where that is, and how long you have occupied it?

Ans. 393 Broadway, and have occupied it twelve or thirteen years.

Cross-int. 65. Where were you before?

Ans. At 3 Chambers street, more than twenty years ago.

Cross-int. 66. Did you carry on the same business at both places?

Ans. Yes, sir; and some years prior to that in the Bowery.

Cross-int. 67. Do you remember how many years Mr. Liese remained at 102 John street after he went there the second time?

Ans. I do not. I did business with Mr. Liese before he went to John street the first time, when he lived in Liberty street the first time, a different locality from 2 Liberty street, where he died.

Cross-int. Can you state within three years how long he was at John street the second time?

Ans. I couldn't state any time with certainty.

Cross-int. 69. Do you manufacture elastic syringes now?

Ans. I do not manufacture elastic syringes, but I manufacture syringes, but not elastic.

Cross-int. 70 Will you give the names and residences of
73 any persons who were employed by you as clerks or book-keepers in years 1849, 1850, 1851 and 1852?

Ans. I couldn't give any; I can't recollect the names. In 1849, I think, I had a young man with me. He is in Europe now; he lives there.

Cross-int. 71. Did you sell these syringes like Exhibit G from 1849 to 1853 at wholesale or retail?

Ans. Both.

Cross-int. 72. Can you give the names of any persons to whom you sold any of them during those years?

Ans. I am not prepared at this moment; no doubt I will be enabled if I have time for reflection.

Cross-int. 73. Please take time for reflection, and give us the names of such persons if you can.

Ans. If you will give me twenty-four hours I will do so.

(Counsel for complainant desires the witness to take the space of time and give his answer to this question.)

Cross-int. 74. You have no books or papers of any kind showing your business in such articles during the years 1849, 1850, 1851, and 1852, have you?

Ans. I have no books; I may have papers.

Cross-int. 75. Do you know of any other dealers in New York or Philadelphia who had syringes like Exhibit G on sale at the time you had them?

Ans. I think most of the first class druggists kept them for sale.

Cross-int. 76. Was that true of Philadelphia as well as of New York?

Ans. I have no knowledge of Philadelphia business; I speak only of New York city.

Direct resumed.

(Counsel for defendants puts in evidence a syringe, which is marked Ex. H.)

Int. 1. Look at Exhibit H, and state whether or not the syringes spoken of by you in answer to cross-interrogatory fifty-two, as manufactured by Wade & Ford, was substantially like it in construction and operation.

(Objected to.)

74 Ans. I meant this kind of syringe was made by Wade & Ford; this is the kind I meant.

(Counsel for defendants puts in evidence four pieces called the Thier syringe, which is marked Ex. I.]

Int. 2. Look at Exhibit I, and state when and where you first had knowledge of such an instrument.

Ans. About 18 or 20 years ago, in this city. I sold some myself.

H. HERNSTEIN.

Deposition of Albert L. Hernstein.—Taken before R. E. Stillwell, examiner, January 31, 1866.

Int. 1. What is your name, age, residence, and occupation?

Ans. Albert L. Hernstein; twenty-six years of age; reside in New York; am engaged in the druggist-sundry business, and have been in that business since 1852.

Int. 2. State whether or not you are connected with the firm of Herman Hernstein & Son; and if so, for how long a time, and in what capacity.

Ans. I am, and have been up to 1861, as clerking; and since then in the firm.

Int. 3. When first, and where, if at all, did you have knowledge of a syringe composed of an elastic bulb, provided with two flexible tubes, and a suitable valve arrangement, all being so organized that by compressing the bulb its contents shall be expelled through one tube, while by the expansion of the bulb, consequent upon its own elasticity, it will be filled with whatever fluid the salient end of the other tube is immersed in, and operate as an injection syringe?

Ans. Before May, 1855; but how long before I do not remember—in the city of New York.

Int. 4. State how you are able to fix the date prior to 1855.

Ans. Because then we moved into Broadway in that year, and I remember the circumstance of buying a good many at that time when replenishing stock.

Int. 5. State whether or not, prior to that time, you had purchased such syringes of Frederick Liese.

Ans. Yes, sir; we had.

75 Int. 6. Look at Exhibit G, and state when first, as near as you can remember, you had a knowledge of such syringes, and if such were purchased of Frederick Liese.

Ans. I could not state how much before 1855 it was, but we purchased them before; I was quite young at the time. I remember purchasing them from Frederick Liese. I can't say now how many.

Int. 7. State whether or not you kept and sold such syringes, and for how long a time after you had first knowledge of them, as nearly as you can recollect.

Ans. We did keep them, and have sold them all along, with the exception of latter years; there have been very few of them sold.

Int. 8. Look at Exhibit I, and state when first you had knowledge of such instruments.

Ans. We did have those as early as 1855; whether we had them before I don't remember.

Cross-examined.

By Mr. Browne:

Cross-int. 1. What is your present place of business?

Ans. No. 2 Liberty.

Cross-int. 2. When did you move from 393 Broadway?

Ans. Partly in April, and finished up in June, 1865.

Cross-int. 3. Did you take possession of your present place and begin to carry on business there in April?

Ans. Yes, sir.

ALBERT L. HERNSTEIN.

Deposition of John Rynders.—Taken before R. E. Stillwell, examiner, February 1, 1866.

Int. 1. What is your name, age, residence, and occupation?

Ans. John Rynders; 42 years of age; reside in Hoboken, New Jersey, and am a surgical instrument maker.

Int. 2. State whether or not you were ever in the employ of Frederick Liese; and if yea, when you entered his employ, and for how long a time you continued.

Ans. I went in his employ in February, 1853, and I stayed with him from two to three years, I should think.

76 Int. 3. Look at Exhibits C and I, and state when first, to the best of your recollection, you had knowledge of such instruments.

Ans. I couldn't swear to a day or year; but, to the best of my recollection, Mr. Liese sold those all the time I was with him.

Int. 4. Look at Exhibit I, and state when first you saw instruments like that.

Ans. Well, I think either at the same time, or before I saw the others.

Int. 5. State where said Liese's place of business was when you first went with him.

Ans. He was at 24 Cliff street, New York.

Int. 6. Look at Exhibit H, and state when and where you first saw instruments like that.

Ans. I think about the same time, 1854, at the same place, or at Mr. Tieman's, where I was afterwards employed.

Int. 7. State whether or not Mr. Tieman had for sale, when you entered his employ, instruments like Exhibits G and J.

Ans. Well, I don't recollect about that, it is so long ago, but I should think he had; it belonged to a regular stock of surgical instruments at that date.

Cross-examined.

By Mr. Browne:

Cross-int. 1. When did you go in the employment of Mr. Tieman?

Ans. It will be eleven years in a couple of months from now.

JOHN RYNDERS.

Adjourned to 1st February, at 10 a. m.

Deposition of Edward Oelzner.—Taken before R. E. Stillwell, examiner, February 1, 1866.

Present, counsel on both sides.

Int. 1. What is your name, age, residence, and occupation?

Ans. Edward Oelzner; fifty years of age; reside in New York, and in brokerage business—used to be a clerk.

Int. 2. State whether or not you were acquainted with Frederick Liese; and if yea, for how long a time you knew him.

77 Ans. I was acquainted with him from 1835 or 1836 up to his death, which was about three years ago.

Int. 3. State whether or not you had business relations with him; and, if yea, what these relations were, and how long they continued.

Ans. I used to be clerk there from 1842 to 1852. I left him then, and went back again in 1855, and I remained there until 1865, when his business was closed. Mr. Liese died in 1863, and his son continued the business till 1865.

Int. 4. State whether or not you are familiar with the syringe having an elastic bulb or chamber, with two flexible tubes, provided with suitable valves for receiving and ejecting fluids, the whole so organized as to operate as an injecting syringe.

Ans. Yes, sir; I have seen them, and am familiar with them.

Int. 5. State when and where you first had knowledge of such a syringe, and give a description of its parts, to the best of your recollection.

Ans. About 1850 or 1851. I first had a knowledge of syringe like Exhibit G in the city of New York, at Liese's store.

Int. 6. De cribe, as particularly as you can, the construction and operation of such syringe.

Ans. There was a ball or bulb in the middle, and on each end a long elastic tube each side of the bulb, was a wooden ball valve the first time I saw it, and by squeezing the bulb you exhaust the air, by letting go again the water will be admitted, and by squeezing it again it will be ejected.

Int. 7. State whether or not the smaller tubes were flexible, and describe the fixtures at each end.

Ans. They were elastic tubes, and one end was a bone pipe, as it is on Exhibit G, and on the other end black horn or ebony.

Int. 8. Look at Exhibit J, and state whether or not the syringes described by you in your last answer were mounted like said exhibit.

Ans. The first I saw had mountings like J and bulb like G.

Int. 9. State whether or not you sold such syringes.

Ans. I did.

Int. 10. State the time when first you sold, or had exhibited for sale, such syringes, as nearly as you can, to the best of your recollection.

Ans. Well, I am sure—positive—in 1852. It may have been
78 two or three years before that, but we had smaller quantities than that as samples.

Int. 11. State, if you know, where such syringes were obtained when you first had them.

Ans. In Paris.

Int. 12. Look at Exhibit I, and state when first you had knowledge of instruments like it.

Ans. About the same as the other; perhaps earlier yet.

Int. 13. State whether or not you had such about that time in Liese's store for sale.

Ans. We had.

Int. 14. Look at Exhibit H, and state when first you had knowledge, as near as you can recollect, of instruments like that.

Ans. I have seen those, too, but it was some years later. We did not have such at that time. I can't say when they came out. The first pattern I saw was French, and I think they came out about the same time.

Int. 15. State how you are able to fix the dates when you first had syringes like Exhibit G and J.

Ans. I left Mr. Liese's store in 1852, and I know we had them before I left there.

Int. 16. What was Mr. Liese's business while you were with him?

Ans. Importer and manufacturer of surgical instruments and sundries.

Int. 17. State whether or not you are now a dealer in such instruments.

Ans. I sell and buy such instruments now on commission.

Int. 18. State for how long a time after their first introduction you sold, either with Mr. Liese or elsewhere, syringes like Exhibits G and J.

Ans. All the time, more or less, since their first introduction.

Int. 19. State whether or not any person has attempted to prohibit your selling such instruments; and if yea, when for the first time.

Ans. Not that I know of.

Int. 20. State, if you know, how long a time after you first had syringes like Exhibit G and I, or either of them, syringes of American manufacture, having elastic bulbs and flexible tubes, first came into market, to the best of your recollection.

79 Ans. I think Matson made the first, 1852 or '53, but his bulb was upright; it had one elastic tube.

Int. 21. State, if you know, how long a time after the Matson syringe, the Davidson syringe, so called, came into market, to the best of your recollection.

Ans. I could not fix any exact time. Some years afterwards.

Cross-examined.

By Mr. Browne, counsel for complainant:

Cross int. 1. Where were you from 1852 to 1855?

Ans. Thirty-two Dey street, same kind of business.

Cross-int. 2. In whose employment?

Ans. The firm was Kruger & Co.; Tauber was the company.

Cross-int. 3. Did you, during those three years, go into Mr. Liese's place at all?

Ans. No.

Cross-int. 4. Do you remember any other syringes that Mr. Liese had in his place for sale before you left there, besides what you have described?

Ans. He had all kinds of syringes.

Cross-int. 5. Had he any other elastic syringes before you left there, besides what you have described?

Ans. Yes, sir.

Cross-int. 6. What other?

Ans. French and American manufacture.

Cross-int. 7. Will you describe them?

Ans. The old fashion syringe, having the elastic bulb shaped like a pear, and a single metallic bound tube attached to it. We had also a French syringe with an elastic bag and a long flexible tube and no valves. No other elastic syringes that I recollect.

Cross-int. 8. For several years before you left Mr. Liese, did he import his syringes through Fabrequettes fils & Morra?

Ans. Yes; we got all our French goods from them, and we got some from Grossman & Wagner, of Paris, direct from them.

Cross-int. 9. Did Fabrequette fils & Morra have a house in New York for several years before 1852?

Ans. Yes, sir.

Cross-int. 10. Did Mr. Liese import his syringes from Fabre-
80 quette fils & Morra, through the house in New York, or direct from the house in Paris, before you left Mr. Liese?

Ans. The orders went to the house in Paris; sometimes a small order was sent to them through their New York house.

Cross-int. 11. Do you mean to be understood that after you returned to Mr. Liese's employment, in 1855, he had in his store for sale syringes like Ex. H.?

Ans. He had samples of them there; he never imported any, to my knowledge.

Cross-int. 12. Do you know that he ever sold one of them?

Ans. That I cannot tell; we never had many of them anyhow.

Cross-int. 13. How many syringes like Ex. G or Ex. I can you swear you have sold since 1857?

Ans. Perhaps two or three dozen altogether.

Cross-int. 14. Do you sell now, on commission, rubber syringes having an elastic bulb and two flexible tubes?

Ans. Yes, sir; I sell Davidson & Matson's once and awhile—one like Ex. G and I; there are not many of them imported now.

Cross-int. 15. Did you sell at Kruger & Co.'s the same sort of syringes you had sold at Mr. Liese's?

Ans. Yes, sir.

Direct resumed.

Int. 1. Name any parties to whom you sold syringes like Exhibits G and I, and the time when, to the best of your recollection, you sold them?

(Objected to.)

Ans. I think I sold to Phelps & Codman, in Boston, Joseph D. Brown, in 1853–'54.

EDW. OELZNER.

Deposition of Louis Le Roy, taken before R. E. Stilwell, examiner, March 8, 1866.

Int. 1. What is your name, age, residence, and occupation?

Ans. Louis Le Roy; fifty-five years of age; reside at 913 Broadway, New York; and am a druggist.

Int. 2. How long have you been engaged in your present business, both as clerk and principal?

81 Ans. Since sixteen years of age, and have been in New York since 1844.

Int. 3. Look at Exhibit G, and state when and where you first saw instruments like it.

Ans. I sold like this in 1849 and 1850, in the drug store of John Milhau, druggist, in 183 Broadway, opposite John street.

Int. 4. State when you left the employ of John Milhau.

Ans. The first of October, 1850.

Int. 5. State whether or not you have sold instruments like Exhibit G, more or less, since that period.

Ans. Yes, sir; I have sold many when I was at the corner of Ninth street and Broadway, from 1852 to 1858. I sold a great many I imported myself from Varnout & Gallante, in France.

Int. 6. State whether or not you saw instruments like Exhibit G at Frederick Liese's during that time.

Ans. Yes, sir; I not only saw them, but when I was out of them I used to buy from him.

Int. 7. State when, for the first time, as nearly as you can recollect, you purchased of Frederick Liese instruments like Exhibit G.

Ans. The same time I imported them, from 1852 to 1858.

Int. 8. State whether or not during the time from 1850 to 1858, you have sold other syringes having an elastic bulb or sac, two flexible tubes and suitable valves for receiving and ejecting fluid.

Ans. I never sold any other but this kind during that time.

Cross-examined by Mr. Browne, counsel for complainant.

Cross-int. 1. Is Mr. John Milhau still living and carrying on the drug business in New York?

Ans. Yes, sir; at the same place, 183 Broadway—Milhau & Son.

Cross-int. 2. Were the syringes which you say you sold while you were with him imported?

Ans. Yes; but not by himself.

Cross-int. 3. From whom did Mr. Milhau obtain them?

Ans. I don't know; I suppose Mr. Liese, but am not sure.

Cross-int. 4. Why do you suppose from Mr. Liese?

Ans. Because he used to buy everything of the kind from that house.

Cross-int. 5. Where was Mr. Liese's place of business at that time?

82 Ans. I don't recollect.

Cross int. 6. You say that from 1852 to 1858 you imported syringes like Exhibit G from Varnout & Galante, in France. Were Varnout & Galante in partnership or separate houses?

Ans. In partnership. Some of my importations from them of these syringes were made through their agent, Mr. Luer, then residing in New York, and some came directly to myself.

Cross-int. 7. You say that when you were out of them you used to buy syringes like Exhibit G from Frederick Liese; was this while you were with Mr. Milhau, or after you went to the corner of 9th street and Broadway?

Ans. Both.

L. LE ROY.

Edward Oelzner, recalled as a witness on the part of defendants.

Taken before E. R. Stillwell, examiner, March 8, 1866:

Int. 1. Have you before testified in this case?

Ans. Yes, sir.

Int. 2. State the places of business occupied by Frederick Liese during the time you were employed by him, and the date of his commencing and leaving each place.

Ans. Until the year 1840 he had a store No. 7 Liberty street, up stairs; from 1840 to 1848 he had the upper part of No. 102 John street; from 1848 to 1853 he was in No. 22 Cliff street; from 1853 to 1860 he occupied the whole building No. 102 John street; from 1860 to November, 1863, he occupied No. 2 Liberty street, at which place he died. He died in November, 1863; his son then carried on the business to March, 1865.

Int. 3. State whether you have in your possession the invoice book of Frederick Liese; and if yea, what years it covers.

Ans. I have. It covers from 1849 to 1855.

Int. 4. State, if you know, what became of his invoice book prior to 1849.

Ans. It was sold for old paper.

Int. 5. State whether or not you have examined the invoice book now in your possession as to the matter of syringes having

83 elastic bulbs, two flexible tubes, and suitable valves for receiving and ejecting fluids.

Ans. I have.

Int. 6. State whether or not you have drawn off from said book the list of syringes answering the description in the last interrogatory;

and if yea, produce it that it may be marked as an exhibit by the commissioner.

(Objected to.)

Ans. I have, and I now produce it. (And it is marked Exhibit K, by the commissioner.)

Int. 7. State whether or not samples of elastic syringes were sent to Frederic Liese from European manufacturers soon after they were made, during the time that you were with him.

(Objected to.)

Ans. Yes, sir.

Int. 8. State whether or not it appears on the invoice book now in your possession, and before referred to, that samples of such syringes were frequently sent to said Liese by European houses.

(Objected to.)

Ans. We got samples of different kinds of syringes all the time from England and France.

Int. 9. State whether or not you sold syringes like Exhibit G during the time Frederic Liese occupied the store No. 102 John street the first time.

Ans. I think I have.

Int. 10. State whether or not Frederick Liese received syringes from Germany during the time you were with him.

Ans. No; not from Germany, but from German houses in Paris; the name of the firm was Grossman & Wagner.

Cross-examined.

By Mr. Browne, counsel for complainant:

Cross-int. 1. Do you understand the French language?

Ans. I think I do; what belongs to that business.

Cross-int. 2. Do you mean to be understood that the various entries from the invoice-book, that you have taken off, in the paper marked "Exhibit K," all signify the same thing, viz: "syringes having elastic bulbs, two flexible tubes, and suitable valves for receiving and ejecting fluids"?

Ans. No, sir.

Cross-int. 3. Do you know at all, from the language itself,
84 of each of the entries in question, what the construction of the articles respectively was?

Ans. Of some I know.

Cross-int. 4. Of which?

Ans. Of the first, page 43, of the invoice-book; also those on page 87, or some amongst them, anyhow. There was four different patterns under that date; also those marked "Clysopoches;" also on page 162, of said invoice book, there are four patterns there like Exhibit H, of different kinds of color, but the same instrument.

Cross-int. 5. Were not the syringes entered on page 99 as six "Clysopoches" "Thier Syringes," so-called?

Ans. Yes.

Cross-int. 6. Having the exhausting and pumping chamber made

of a flat piece of metal, with an elastic cap over it, which was pressed and released by the thumb to work the instrument?

Ans. Yes.

Cross-int. 7. Do you know, from the language of the entry itself, on page 87, that either of the four articles there set down as "Clysoir, new pattern," was a syringe having an elastic sac, two flexible tubes, and suitable valves?

Ans. I cannot be positive about it; I think I am.

Cross-int. 8. How do you know the construction of the instrument set down in your list, under the head of "page 43, Decr., 1849, No. 3?"

Ans. Because we handed it all around, and looked at it as something new at that time.

Cross-int 9. What is the English meaning of the words "clyso livier a boule?"

Ans. I can't swear to the meaning of the words. I can't translate it literally what it means.

Direct resumed.

Int. 1. Describe the instrument entered on page 43 as "clyso livier a boule," referred to in your answer to cross-interrogatory four.

(Objected to.)

Ans. My impression is it must have been one like Exhibit G.

Int. 2. Did the instrument referred to in your answer to cross-interrogatory 6 as clysopoches have two flexible tubes and suitable valves for receiving and ejecting fluids?

85 Ans. I am not sure that they had valves. They had two flexible tubes; I never opened them.

EDW. OELZNER.

R. E. S.—Examiner.

Page 43. Decbr. 1849.
No. 3. 1 clyso livier a boule ..... 10 frs.
" 67. March, 1850.
No. 21. 3 injecteurs ..... 8 frs.
" 87. Novbr., 1850.
1 Clysoir—new pattern ..... 5 frs.
1 do do ..... 3 frs.
1 do do 1.65
1 do do 2.50
" 97. Febry., 1851.
1 Clysodame ..... frcs. 10—50 per cent.
" 99. April, 1851.
6 Clysopoches ..... 10 frcs. 45 per cent.
" 107. 12 do ..... 10 frcs. 45 per cent.
" 155. July, 1852.
½ doz. clysoirs., No. 146 ..... 72 frcs.
No. 76, 97, 98, 99.
4 Seringues auz livier assort.
" 200. 12 Clysopoches ..... 10 frcs. 45 per cent.

Deposition of Thomas Richardson, taken before R. E. Stillwell, examiner, March 9, 1886.

Int. 1. What is your name, age, residence, and occupation?

Ans. Thomas Richardson; 64 years; reside in 8th Avenue near 40th street, New York, and am a cutler and surgical instrument maker.

Int. 2. How long have you been engaged in your business as surgical instrument maker?

Ans. I have been on my own account forty years—served my time fourteen years before.

86 Int. 3. Look at Exhibit G, and state when and where for the first time you saw instruments like it.

Ans. I ordered them from Man & Son, London, in 1850, and another firm of Meyer & Co., also of London. I meant to (have) brought the invoices but I could not find them. I lost a day in trying, but my children have burnt up most of my old papers, books of sale, &c.

Int. 4. State whether or not you sold instruments like Exhibit G and H in Liverpool prior to 1850.

Ans. Just the same kind of instruments as Exhibit G, but the centre was plain, and just like Exhibit H.

Int. 5. State how long a time previous to 1850 you sold instruments like Exhibits G and H, to the best of your recollection.

Ans. I should say about four or five years, but I was employed by a medical gentleman to make him one on the same principle, and he gave me a common India rubber bottle to make the centre of, and instead of elastic tubes they were of tin. This was thirty years ago. He was a medical gentleman in the Northern Dispensary. This was was to try the experim nt if it would answer to give glysters, and it did answer, and he afterwards manufactured some with elastic tubes; I believe he employed Mr. McIntosh & Co. to make them, as he could get them cheaper. I merely made the model for him to show that it would answer. This was long before Exhibit G came round for me to buy them.

Cross-examined.

By Mr. Browne:

Cross-int. 1. Do you know where the syringes which you say you ordered in 1850 from Man & Son and Meyer & Co., of London, were made?

Ans. I think they were made in London.

Cross-int. 2. Do you know that? and if you do, how do you know it?

Ans. McIntosh & Co. were the first to patent vulcanized India rubber goods, and from that I conclude, they coming from London, that they had purchased the materials from them.

Cross-int. 3. Do you mean to say that you purchased from either Man & Son, or Meyer & Co., in 1850, any syringes having two flexi-

ble tubes, and an elastic bulb of a generally oval form like that in Exhibit G, but without the band around it?

87 Ans. Yes.

Cross-int. 4. From whom did you get the instruments like Exhibit G, which you say you sold in Liverpool prior to 1850?

Ans. From Man & Son and Meyer & Co.

Cross-int. 5. When did you come to this country?

Ans. I came here in 1857.

Counsel for the complainant here objects to the witness' answers to the third and fifth direct interrogatories, as intentionally or unintentionally conveying the impresson that the transactions there referred to had taken place in the United States.

THOMAS RICHARDSON.

Deposition of Henry C. Snowden.

FEBRUARY 2, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. Henry C. Snowden; twenty-eight years of age; reside in Philadelphia; manufacturer of surgical instruments.

Int. 2. State whether or not you are a member of the firm of Snowden & Brothers.

Ans. I am a member of the firm.

Int. 3. How long a time have you been connected with that firm, either as a member or clerk?

Ans. With Snowden & Brothers since 1857; with the house since 1853. The firm changed in 1857.

Int. 4. State whether or not you are familiar with an instrument called the Philadelphia lever apparatus; and if yea, give a description of its construction and operation.

Ans. I am. I first saw it in the spring of 1854 in the hands of Weigand and Snowden, the manufacturers; it consisted of a metal bowl or cup, with an elastic cap fastened on to the same with a screw flange; it was also furnished with a rubber air-chamber, two elastic tubes attached to the instrument, one for receiving the fluid and the other for ejecting it. The fluid was received and expelled by alternately pressing and raising the thumb upon the rubber cap. There was underneath the gum cap a brass spiral spring to quicken

88 the action of the rubber cap in receiving the fluid. The valves were of metal, one at the receiving pipe and the other in the ejecting pipe, close up to the body of the instrument.

Int. 5. State whether or not you manufactured and sold such instruments in 1854, and thereafter; and if yea, state the numbers as nearly as you can.

Ans. The instruments were manufactured by Wiegand & Snowden, in the spring of 1854, and brought into the market in June of that year. They were sold during the following years in a greater or less number. The quantity amounted to several gross; I don't know exactly how many.

Int. 6. State, as near as you can, how many such instruments were sold in the year 1854, according to the best of your recollection.

Ans. I should think from eighteen to twenty-four dozen.

Int. 7. State whether or not you have entries in your books which would enable you to fix the date of the manufacture of those instruments, and if you have consulted those books.

Ans. I could not state the exact time of the manufacture there to a day, but could show from books time of actual sales, namely, June, 1854. I have consulted the books with reference to the matter. I fix the date from my knowledge.

Int. 8. State, if you know, where said firm of Wiegand & Snowden obtained the patent for making said instruments.

Ans. The model was a French one. I did not see it purchased; understood it was purchased in Boston.

Int. 9. Look at defendants' Exhibit I, and state whether that is substantially the instrument so manufactured.

Ans. This is apparently the same thing, with the exception in ours the ball was plain rubber and the rubber cap was thicker.

Int. 10. Look at defendants' Exhibit H, and state when first you had knowledge of instruments like it, and state what you know of it.

Ans. I first saw it about May or June, 1854; that is a similar instrument; this one was made by Weigand and Snowden in 1854. I never saw any of them until then except in their possession; they got it up from a (so said) English pattern, which I believe was left for repairs at John Thornley's. The firm sold something like four or five gross of these syringes. The first sales were in November, 1854.

89 Int. 11. State whether John Thornley, of Philadelphia, had knowledge of such instruments in 1854.

Ans. He had. He was interested in the manufacture.

Int. 12. How interested?

Ans. He was a participant in the profits, and he furnished the rubber stock for making them.

Int. 13. State whether or not you were connected with the house of Weigand & Snowden in 1854.

Ans. I was, during the whole of that year.

Int. 14. Describe particularly the construction of the different parts and the operation of Exhibit H.

Ans. It consists of a straight rubber barrel or receiver with a metal cap at each end; also two rubber tubes, one attached to each cap. In each cap there is a valve, one opening into the barrel and one opening outward from it. The instrument is operated by alternately pressing and relaxing the hand upon the rubber barrel. By pressing the hand in the first place, you create a vacuum within the rubber barrel; and by relaxing the water or fluid rushes into the barrel by raising the valve leading into the barrel; by again grasping the instrument the water or fluid is forced out through the valve leading out of the barrel and through the long rubber tube, the valve opening into the barrel being shut by the pressure of the fluid against it. This motion may be made as rapidly as desirable. The effect

will be to receive any amount of fluid into the chamber of the instrument, and expelling it through the rubber tube connecting with the outlet of the instrument.

Int. 15. State whether or not any person has attempted to prohibit the manufacture and sale of such instruments by you; and, if yes, when for the first time.

Ans. There was never any attempt made to stop Weigand & Snowden, the makers of the instrument.

(Cross-examination declined.)

HENRY C. SNOWDEN.

[It is agreed by the counsel for the complainant that John Thornley and J. H. Genrig, both of Philadelphia, would, if present, testify substantially the same as the foregoing witness.]

Henry C. Snowden recalled.

90 *Re-examined.*

By Mr. Badger:

Int. 1. State whether or not you had knowledge of any other syringe having an elastic bulb and two flexible tubes, at your place of business, than those already described by you; and if yea, state when, for the first time, and give a description of such instrument.

(Objected to by Mr. Browne.)

Ans. I have seen a syringe in the store, in 1854, similar in general shape to Exhibit "G," but it was made of black rubber; there were no mountings between the tubes and the bulb, but they were all in one continuous piece; the shape of the bulb was the same as the one now known as Davidson's, only I think it had no ridge around the middle. The valves, if I remember correctly, were at the ends of the tubes nearest the inlet and outlet. I do not know whether it was imported or not; it was a sample, evidently. The principle was the same, but it did not work very well.

HENRY C. SNOWDEN.

Deposition of Richard Wright, taken before W. G. Hibler, U. S. Commissioner, February 2, 1866.

Int. 1. What is your name, age, residence, and occupation?

Ans. Richard Wright; my residence is 1432 Pine street, Philadelphia; I import fancy goods and manufacture perfumery.

Int. 2. Are you a member of the firm of R. & G. A. Wright?

Ans. I am the senior partner.

Int. 3. State whether or not you are familiar with the syringe having an elastic bulb or chamber, flexible tubes, and suitable valvular arrangement, so arranged as to operate as an enema injecting syringe.

Ans. I am.

Int. 4. State when first you had knowledge of such an instrument, and give a description of its construction and operation.

Ans. In the month of June, 1851, I was in London, and I purchased, in Smithfield, of a surgical instrument maker a syringe called Dr. Kennedy's, of Dublin—his invention, and I brought it to
91 this country. It was an India rubber ball, or balloon-shaped, about four inches in circumference; it had a tube which, by exhausting the air by pressure on the ball, caused the water to flow into it; it then had a check-valve, and by pressure forced it out of a flexible valve. The junctions were metallic, both valves were in metal. The delivery tube was flexible. I am not positive whether the other tube was metallic, or what you call a flexible tube.

Int. 5. State whether or not said reception tube was flexible or inflexible, to the best of your recollection.

Ans. I can't say that exactly; it was some time ago. It strikes me there was an attachment to it, but I am not certain. I mean a continuation of pipe by attachment.

Int. 6. State whether or not said continuation pipe was flexible.

Ans. It was flexible.

Int. 7. State when said instrument arrived in this country, and what was done with it.

Ans. July, 1851. I had in my possession some time in my store, and exhibited it. I eventually sold it. It might have been a year after.

Int. 8. Look at Exhibit G, and state when and where, for the first time, if at all, you saw that or instruments like it.

Ans. As near as I can remember in December, 1852; there was a sample sent to us. We ordered a quantity and received and sold them in the fall of 1853.

Int. 9. State where you obtained said instruments, and state the number you so received and sold, as near as you can recollect.

Ans. We got them from L. & P. Grosholz, Paris. I can't tell you the number, not less than a gross or two at a time. We used to order them by the gross. We sold a great many of them.

Int. 10. State what was done with the instrument that you say you received in December, 1852.

Ans. It was only sent as sample—I don't know what became of it.

Int. 11. State whether or not instruments like it were offered by you for sale, either upon order or otherwise, at or about the time said sample was shown you.

Ans. I have seen them with others previous to the arrival of ours, in one or two instances.

92 Int. 12. State whether or not the instruments last spoken of were exhibited publicly with other instruments offered for sale.

Ans. It was exhibited to me; that is all I know about it.

Int. 13. State whether or not it was exhibited to you as a sample from which to order others like it.

(Objected to by Mr. Browne.)

Ans. Yes.

Cross-examined.

By Mr. Browne, for complainant:

Cross-int. 1. What was the name of the surgical instrument maker in Smithfield of whom you purchased the Kennedy syringe?

Ans. I don't remember now, I must have the papers somewhere. He is the most celebrated instrument maker in Smithfield. He keeps all those new things.

Cross-int. 2. Do you remember the number or locality in Smithfield, or any other description of the place, by which it can be identified?

Ans. It was just as you enter into Smithfield. It was called Smithfield, though it was on the open square. It was on the corner of the square and the principal street leading out of it and into the strand.

Cross-int. 3. Was it on on the left or the right, going out of the square to the strand?

Ans. I think it was on the left, as near as I can remember. I was there only once or twice.

Cross-int. 4. What Dr. Kennedy was it whose invention the syringe was stated to be?

Ans. A celebrated doctor of Dublin—living at that time.

Cross-int. 5. Will you examine your papers and find, if you can, the bill or other memorandum by which the date of that purchase and the name of the surgical instrument maker can be ascertained?

Ans. I will do so.

Cross-int. 6. How long was the flexible tube through which the water passed out in that instrument?

Ans. I think it was about thirty inches.

Cross-int. 7. How long was the other tube, that through which the water passed in?

Ans. Probably ten inches.

Cross-int. 8. Of what material was the long tube?

Ans. It was a varnished-covered flexible tube, very hand-
93 some. I don't know exactly what it was covered with; it was green colored, and chequered.

Cross-int. 9. Will you describe now just what you are willing to swear to, as clearly remembered by you, in regard to the construction and material of the other tube?

Ans. I think it was metallic if I am not mistaken.

Cross-int. 10. How long was it?

Ans. I believe it was ten inches long. There was an assortment of tubes that came with in a case.

Cross-int. 11. How many tubes in this assortment?

Ans. I think there was at least four or five different attachments or tubes.

Cross-int. 12. Were these tubes constructed to slip on over the metallic tube?

Ans. They were attached by screws.

Cross-int. 13. Attached to the end of the metallic tube?

Ans. Yes, attached to the end of the metallic tube.

Cross-int. 14. Of what shape were these attachments?

Ans. There was one for females, single tube for injection, and a short flexible tube to increase the length of it.

Cross-int. 15. Was this single flexible tube curved in form?

Ans. No.

Cross-int. 16. Were these attachments or tubes that you speak of applied to that tube which entered the body of the patient?

Ans. Yes.

Cross-int. 17. Did you get the syringe like Exhibit G from L. & P. Grosholz, of Paris, by direct shipment from themselves to you, or through a branch or commission house in this country?

Ans. We gave the order to the house here.

Cross-int. 18. What was the name of the house here?

Ans. The same in the city of Philadelphia—a branch house.

Cross-int. 19. How long after you saw the sample instrument like Exhibit G did you order some like it?

Ans. Very soon after; I can't say the exact time.

Cross-int. 20. Did you ever notice any manufacturer's names or initials on the syringes?

Ans. I do not remember, only the word "Brevete."

94 Cross-int. 21. Were they similar in mountains to Exhibit G?

Ans. The same.

Cross-int. 22. Where was the word "Brevete" placed on those syringes?

Ans. On the metal, I think; on the metal couplings at the ends of the bulb.

Cross-int. 23. Do you remember no other name or mark on those syringes except the word "Brevete?"

Ans. I do not remember.

Cross-int. 24. Did those syringes have an ornamental raised band around the bulb as Exhibit G has?

Ans. I believe they did. I am not sure.

Re-examined.

By Mr. Badger:

Int. 1. In answer to the fourteenth cross-interrogatory you say "to increase the length of it;" to increase the length of which tube?

Ans. The short one, the sucking-up end.

Int. 2. When the attachment spoken of in answer to the fourteenth cross-interrogatory was attached, was or not said sucking-up end flexible?

Ans. It had the appearance of a long flexible tube, being about ten inches long. I never tried whether it was flexible or not; it laid down straight; it had an end with an opening more cut out than the end on Exhibit G.

Int. 3. State whether or not said syringes purchased by you like Exhibit G were sold in the regular course of your business.

Ans. Yes.

Int. 4. Did any one ever attempt to prohibit your selling said instruments like Exhibit G?

Ans. No.

RICHARD WRIGHT.

On reflection, the witness states that the name of the instrument maker was Atkinson.

RICHARD WRIGHT.

95 *Testimony for complainant.*

APRIL 25, 1866.

Counsel for the complainant offers in evidence—

I. Certified copy of patent granted to Chas. H. Davidson, assignee, March 31, 1857, No. 16,956.

I*a*. Certified copy of file wrapper and contents, in matter of application for said original patent.

II. Re-issue letters patent granted to Hamilton D. Lockwood, assignee and complainant, April 25, 1865, No. 1,940.

III. Certified copy of caveat filed by Ch. H. and H. E. Davidson, January 14th, 1853.

IV. Certified copy of assignment from H. E. and C. H. Davidson to C. H. Davidson, October 13th, 1856.

V. Assignment from Chas. H. Davidson to H. E. Davidson, dated September 20, 1859.

VI. Assignment from H. E. Davidson to H. D. Lockwood, complainant, dated November 18th, 1862.

VII. A syringe, labelled "Complainant's Exhibit, No. 7, N. A. P., Exr.," admitted to be a specimen of the syringes made and sold by the defendants.

Deposition of Moses Babcock, taken, subscribed, and sworn to before N. Austin Parks, examiner, May 3, 1866.—*Direct examination.*

By Causten Browne, esq., counsel for complainant:

Int. 1. State your name, age, residence, and occupation.

Ans. Moses Babcock; age, 60 years; residence, Charlestown, Mass.; occupation, gun maker.

Int. 2. Were you ever acquainted with Mr. Chas. H. Davidson, of Charlestown, deceased?

Ans. I was.

96 Int. 3. Did you ever know anything of his being concerned in the manufacture of an India rubber syringe? If so, please to state when and where you first had such knowledge: and state what such knowledge was.

Ans. I knew of his being concerned in their manufacture; it was in 1852, the latter part of '52, in Charlestown, Massachusetts. that I first knew of it; the first knowledge I had of it, Mr. Davidson told that he was making one to go with a rubber bag for a sick sister, who had a cancer in the womb, and, as he said, wanted something that she could use alone, with no one else present to use it.

Int. 4. Did he say that he was then so engaged, or that he had been so engaged?

(Objected to as leading.)

Ans. He said that he had been engaged in making one of that kind.

Int. 5. You say this was in the latter part of 1852. If you can state the time any nearer please do so.

Ans. I could not set the date; it is impossible to remember. I know it was in the latter part of '52.

Int. 6. Was it in the fall or in the winter?

Ans. Well, sir, I couldn't tell. I should think in the fall, but I am not certain. I could not swear to it.

Int. 7. How do you know it was before 1853?

Ans. Because it was some time before he filed his caveat, and that was January 3d or 8th, I'm not certain which.

Int. 8. State what, if anything, Mr. Davidson told you in this conversation as to the mode of operation of the syringe which he had been getting up.

Ans. I can't recollect what he told me about it, but that it was pumped by a rubber bag and a bottle was used.

Int. 9. Did you afterwards see an India rubber syringe in the possession of Mr. Davidson? and if so, when was it and where?

Ans. I never saw that one. I saw the other kind at his shop on Medford street, Charlestown. That was in '52.

Int. 10. Please reflect as to the year; was it before or after his caveat was filed?

Ans. It was in '52. It was before he filed his caveat.

Int. 11. Will you describe the syringe which you then saw?

97 Ans. Well, sir, it had an oval bulb with a tube attached to it. It was all one piece—the rubber was—with the suction pipe at the extreme end, and the anal pipe at the other.

Int. 12. How many tubes were there, and of what material?

Ans. I didn't see but one that I recollect of; that was the one attached to the end of the tubing.

Int. 13. I am speaking of the tubing. What was that made of?

Ans. The tubing was rubber.

Int. 14. How many rubber tubes were there, and about how long?

Ans. Two; I should think from ten to twelve inches; I don't know exactly.

Int. 15. To what were these tubes connected?

Ans. To the bulb.

Int. 16. Please look at drawing annexed to the caveat, Exhibit 3, and state how far that represents the syringe you saw.

Ans. Well, sir, I should think that was the pattern of it.

Int. 17. Was there any mark or inscription on the bulb of this syringe which you saw?

Ans. Yes, sir.

Int. 18. What was it?

Ans. It had the initials of Herman & C. H. Davidson, caveat filed January 3, or 8th—I don't know which—'53.

Int. 19. Then you saw this syringe after the caveat had been filed, did you not?

(Objected to as leading.)

Ans. Yes, sir; I saw it after. I don't know that the one he showed me there—the first one I saw—had a name on it.

Int. 20. Was the first syringe of the construction you have described shown to you by Mr. Davidson before or after he filed his caveat?

Ans. That was before.

Int. 21. When did you next see a syringe of that construction in the possession of Mr. Davidson, or see him doing work about it?

Ans. Well, I used to be in and out of his shop, and see it frequently before he went away.

Int. 22. Did Mr. Davidson at any time before he went away apply to you for a man to do a certain part of the work upon syringes?

Ans. Yes, sir.

98 Int. 23. What part was it? And if you sent him a man, who was the man?

Ans. It was to turn the metal part—the tubes. The man's name was William Fuller.

Int. 24. When was this?

Ans. I couldn't state the date. It was in '52, I think.

Int. 25. On this occasion did Mr. Davidson have one of the syringes with him?

Ans. It was in his shop that he made the inquiry of me. He had them in the shop I presume—most likely he did. I used to see them there most every time I went in.

Int. 26. Was this the first time that you had ever seen in his possession a syringe like that shown in the caveat drawing?

Ans. No, sir, I think not.

Int. 27. You say Mr. Davidson went away; where did he go to?

Ans. To California.

Int. 28. Have you any knowledge of the number, or about the number, of rubber syringes which were made by or for Mr. Davidson before he went to California?

Ans. No, sir; I don't know how many were made, but I think not a great many.

Int. 29. Will you name all the persons who did any work upon them for Mr. Davidson, so far as you know, before he went to California?

Ans. Mr. Fuller, Mr. Pattee. I know men who worked for him, but not whether they worked on the syringes.

Int. 30. Were all the rubber syringes which Mr. Davidson had before he went to California of the same construction?

Ans. So far as I know they were. I never saw anything different.

Int. 31. Was any difficulty found in the rubber syringes so made before Mr. Davidson went to California? If yea, what was it?

Ans. There was a good deal of trouble with the rubber. The tube part would be thin on one side, and near the bulb it would burst out; he had a good deal of trouble with it.

Int. 32. Was it at the turn where the tubing entered the bulb that this difficulty existed?

(Objected to.)

Ans. Yes, sir.

99 Int. 33. Did Mr. Davidson do or try anything? and if so, what, to remedy this before he went to California?

Ans. I don't know that he did. He went to New York, to the rubber company, and tried to get them to make them better.

Int. 34. About how long was Mr. Davidson absent in California?

Ans. I should think a year and a half, or somewhere thereabouts. I don't know exactly.

Int. 35. When he returned from California, where did he go to work?

Ans. With Mr. Pattee, in Charlestown.

Int. 36. After that, when he began to make his syringes, where did he have his shop?

Ans. He had his shop in mine—with me.

Int. 37. How long before Mr. Davidson's caveat was filed did you see the first rubber syringe of the construction you have described, to the best of your recollection?

Ans. I couldn't tell how long. It was in 1852, but I couldn't say, —couldn't set any date.

Int. 38. Did those syringes of the kind mentioned, which were made by or for Mr. Davidson after he returned from California, differ in any particular of construction from those that were made before he went to California? If so, how?

Ans. Yes, sir; they did. The bulbs were made separate from the piping. They were coupled together with metallic couplings. The valves were different from those he made before he went to California.

Int. 39. Do you know what Mr. Davidson's pecuniary condition was in 1853, and before he went to California?

Ans. Well, he told me that he was very poor.

Int. 40. How was it after he returned from California?

Ans. Well, he told me after he got back he had a little rising one hundred dollars, and that it was all he brought back with him.

Cross-examined.

By A. F. Badger, esq., of counsel for respondents.

Cross-int. 1. When did your acquaintance with Charles H. Davidson begin?

Ans. I couldn't tell exactly; between thirty and forty years ago.

Cross-int. 2. What was Chas. H. Davidson's business in 1852?

Ans. Well, he had different kinds of business. He was to

100 work upon a cork machine—horse shoe machine—making syringes—I don't recollect anything else. I recollect now a propeller—a small steamboat—a yacht—that he was engaged in getting up.

Cross-int. 3. Where was the conversation between you and Mr.

Davidson when he first told you he was making a rubber syringe to go with a rubber bag for a sick sister, &c.?

(Objected to; the witness having not so testified.)

Ans. I think it was in my shop he told me this, but I am not certain.

Cross-int. 4. Did he tell you how he was going to make it?

Ans. I think he tried to explain it to me, but I couldn't tell. I recollect the rubber bag and, I think, the bottle, but how it was managed I couldn't tell. It was to be used by the sick person without any other assistance; that was the object of it.

Cross-int. 5. Can you give the language, or the substance of it, used by Mr. Davidson on this occasion? If you can, please do so.

Ans. Well, I can give the substance of it. He told me that is sister was sick with a cancer in the womb; that they wanted to get something that she could use injections with without assistance; that Herman, his brother, had suggested an idea to him; and then he went on to state about the rubber bag, or a boy's playing-ball.

Cross-int. 6. Did he show you any model or drawing of the instrument which he proposed to make?

(Objected to, because the witness has testified that the instrument mentioned by Mr. Davidson in this conversation was not one which he proposed to make, but one which he had made.)

Ans. He did not.

Cross-int. 7. Did he, at that interview, state to you that he had made such an instrument?

Ans. I think he did; that he had made it, or was making it. I could'nt swear that he said it was done.

Cross-int. 8. Did he show you any part of the instrument, or give any other description of it than what you have already stated?

Ans. He didn't show me any part of the instrument; he probably gave me a full description of it at the time; but I can't remember what that description was, (it was a good many years ago,) any more than that he was using the rubber bag and a bottle and rubber tube; that's all I can remember of the description. I don't recollect whether he said tube or tubes, I am sure.

101 Cross-int. 9. Was anything said about an elastic bulb or valves?

Ans. I couldn't say.

Cross-int. 10. How did he tell you the instrument was to operate in use?

Ans. I don't know whether he described how it was to operate, but it was so that she could use the injection herself without assistance. He might have described it, but I can't recollect.

Cross-int. 11. Did he, at that time, in any manner give you a clear idea of a practical working syringe?

(Objected to.)

Ans. No more than this one that he was to work on; as I tell you, he described that to me at the time, but further than that I don't think he did.

Cross-int. 12. Had you at that time ever seen a rubber syringe,

either the one that you say he said he was at work upon, or any other?

Ans. No, sir, never.

Cross-int. 13. When and where did you first see a rubber syringe?

Ans. I see it in his shop, in '52, I think—the latter part of '52.

Cross-int. 14. How long time after the interview above spoken of?

Ans. I couldn't tell you how long it was.

Cross-int. 15. How, then, do you know it was in 1852?

Ans. He filed his caveat in '53, the fore part of January—the third or eighth, I don't remember which—and it was before that some time.

Cross-int. 16. How are you able to fix the date of the filing of his caveat?

Ans. Because I had one of his old bulbs with it on.

Cross-int. 17. When did you first have the bulb last spoken of?

Ans. It was one he left in the shop. I kept it to remember him by as much as anything. I couldn't tell you when he sold out; he was in the shop with me and carried on business there; some of his help worked in the room with me. This bulb was left there; there was two on 'em. They were the first he made, the first pattern, and I kept them to look at; I mean the first patern he made before he went to California, the bulb and the piping all solid together, made in one piece.

Cross-int. 18. Fix the date, as nearly as you can, when you first came into possession of said bulb.

Ans. I could not fix the date. They were left there, and I took them and took care of them. I suppose they were thrown
102 away. When Mr. Lockwood brought the syringe out, I put them in a drawer and kept them. Davidson had then left that place, and sold out to Lockwood.

Cross-int. 19. Have you any books or memorandum which will enable you to tell when Davidson came into the shop with you, and when he left?

Ans. Yes, sir; I can tell when he came there, and, I think, when he left.

Cross-int. 20. Will you please examine said books and memoranda, and state when Davidson came into the shop with you, and when he left?

Ans. I can tell you without referring to my books, when he came there. It was in December, 1855.

Cross-int. 21. Was that the first time he came to occupy the shop, or any part of it, with you?

Ans. Yes, sir.

Cross-int. 22. Where was his place of business at the time of your first conversation with him about syringes?

Ans. Well, I think it was in Medford street.

Cross-int. 23. Where was your shop at that time?

Ans. On Charlestown Square.

Cross-int. 24. Is there anything else which enables you to fix the date of the filing of the caveat, except the inscription on the bulb before spoken of?

Ans. No, sir; I don't think I could tell if it wasn't for that.

Cross-int. 25. Did you have conversations with Mr. Davidson relative to filing the caveat at the time when he filed it?

Ans. I remember his telling me about filing one, but I couldn't tell when it was.

Cross-int. 26. Did he tell you of filing it before or after the conversation spoken of in your answer to the third direct interrogatory?

Ans. I couldn't say whether before or after.

Cross-int. 27. How, then, are you able to fix the date of his describing the instrument to you as occurring before the first of January, 1853?

Ans. I haven't fixed the date, no particular date, except I think it was in '52.

Cross-int. 28. You stated, in answer to the seventh direct interrogatory, that you are able to fix the date of the conversation
103 referred to in cross-interrogatory twenty-sixth, because it was some time before he filed his caveat, and in answer to twenty-sixth cross-interrogatory, you say you couldn't say whether he told you of filing his caveat before or after such conversation. How, then, does the filing of the caveat enable you to fix the date of that conversation wherein Davidson gave you the description referred to in answer to the third direct interrogatory?

Ans. Well, he hadn't made any syringes previous to his filing the caveat, you know; that's why—no, I am confused. I know he did make syringes before. I didn't understand the question. I know that conversation was before he filed the caveat—some time before. After making this bag syringe he made others, I expect, before he filed his caveat.

Cross-int. 29. When did you first know of his filing the caveat?

Ans. I could state the time. It was before he went to California.

Cross-int. 30. When did Mr. Davidson go to California?

Ans. I think the fore part of the fall of '53?

Cross-int. 31. Did you ever see the instrument which you say Davidson described to you in the latter part of '52?

Ans. I never saw it at all.

Cross-int. 32. When did you first see any rubber syringe manufactured by Davidson?

Ans. I see it in this shop, in '52.

Cross-int. 33. What time in '52?

Ans. I can't tell you what time; the latter part of the fall, I should judge. I can't set the date.

Cross-int. 34. Will you swear it was before October, '52?

Ans. No, sir; I shouldn't want to swear it was.

Cross-int. 35. Can you swear you saw such an instrument before November, '52?

Ans. No, sir, I couldn't.

Cross-int. 36. Can you swear that you saw a rubber syringe, of Davidson's make, before December, 1852?

Ans. Yes, sir; I can swear that I see it before December.

Cross-int. 37. How are you able to fix the date as before December, '52?

Ans. I fix it in this way: it was more than two months before his caveat was filed that I see it there. It might have been, and
104 possibly was, sooner than that; but I am satisfied, and willing to state, that it was before December set in.

Cross-int. 38. Did you know of his filing a caveat at or about the time he filed it?

Ans. I couldn't state whether I did or not. I know he told me about it; but I couldn't set the date.

Cross-int. 39. Fix the date when first you had knowledge of the filing of a caveat by Davidson.

Ans. That I can't do, sir.

Cross-int. 40. Will you swear that he told you he had filed a caveat before January 1, 1854?

Ans. Oh yes, sir; I will.

Cross-int. 41. Will you swear that he told you before June, 1853, that he had filed a caveat?

Ans. No, sir.

Cross-int. 42. You are willing to swear, then, that sometime between June, 1853, and January 1st, 1854, Davidson told you that he had filed a caveat; are you?

Ans. He told me before he went to California. I can't state the time.

Cross-int. 43. Where were you when Davidson first told you he had filed a caveat?

Ans. I couldn't fix the place. I think it was in my shop. He used to be there a great deal.

Cross-int. 44. Had you seen one of Davidson's instruments before he told you he had filed a caveat?

Ans. I think I had.

Cross-int. 45. Did you examine it minutely?

Ans. Well, I took it in my hands, handled it over, and examined it.

Cross-int. 46. Give a minute description of the first syringe of Davidson's make you ever saw, of all its parts, and of its mode of operation.

Ans. Well, it was made with an oval bulb and two pieces of tubing in one piece; it wasn't coupled. He had a suction tube at one end with a valve; at the other end one anal tube and a valve in that, and by compressing and releasing the bulb it would suck and throw the the fluid. I don't think I saw any vaginal pipe; I don't seem
105 to remember seeing any; he might have had one.

Cross-int. 47. Of what were the valves made?

Ans. They were made at that time, I think, of some metal, tin or block tin. I didn't examine them particularly so as to describe them.

Cross-int. 48. Of what material was the anal tube made?

Ans. Of white metal.

Cross-int. 49. Had you, at that time, ever seen a tube adapted to female use?

Ans. No, sir, I think not. I might have seen one at that time, but don't seem to recollect about it—shouldn't want to testify to it.

Cross-int. 50. Look at figure 2 in the drawing attached to the attested copy of the caveat, and state if you ever saw a pipe like that; and if yea, when.

Ans. I don't know really whether I ever did or not. I presume I've seen them, but I don't remember.

Adjourned to $3\frac{3}{4}$ p. m.

Resumed.

Cross-int. 51. Were there any letters or name upon the instrument which you say you saw before you knew Davidson had filed his caveat?

Ans. There might have been.

Cross-int. 52. Were there, to the best of your recollection, any name or letters upon it?

Ans. I couldn't say whether there was or was not.

Cross-int. 53. Who made the rubber work for Davidson at the time of his first manufacture of syringes?

Ans. It was made in New York. The Union Rubber Co., I think, made them.

Cross-int. 54. Was any rubber work made for him in this State, at that time?

Ans. Not that I know of. I think not. I don't know.

Cross-int. 55. Did you see one of Davidson's syringes so completed as to operate practically, before you knew of the filing of his caveat?

Ans. Yes, sir; that is, I saw him throw water with it.

Cross-int. 56. Have you the bulb now in your possession which you speak of as enabling you to fix the date of the filing of the caveat?

106 Ans. I have one of them; Mr. Lockwood has the other.

Cross-int. 57. Will you please produce that bulb that it may be annexed as an exhibit to your deposition?

Ans. The one I have, I believe, has not the date upon it, the bulb having been torn open; but I believe the one Mr. Lockwood has, has the date.

Cross-int. 58. How do you know that the rubber work for Davidson's first syringes was made by the Union Company, in New York?

Ans. I know by his telling me so; and he had a good deal of trouble with 'em. That's all the way I know.

Cross-int. 59. What was the trouble?

Ans. Where the piping joined on to the bulb it would be thin on one side and burst out. They didn't answer the purpose.

Cross-int. 60. Were the valves at the ends of the tubes?

Ans. They were in the ends of the rubber tubes, in a box as we call it.

Cross-int. 61. Did Mr. Davidson get the difficulty remedied before he went to California?

Ans. Do you mean did he get good ones?

Cross-int. 62. Yes; did he get good ones?

Ans. No, sir; he did not get good ones.

Cross-int. 63. What was the difficulty? Describe it minutely.

(Objected to as already twice answered.)

Ans. It was what I told you before; I can describe no other.

Cross-int. 64. Did Mr. Davidson sell any syringes before he went to California?

Ans. Not to my knowledge.

Cross-int. 65. Did you have any conversation with Mr. Davidson relative to his attempts to remedy the difficulty, before he went to California?

Ans. Mr. Davidson used to complain to me of the rubber, and find a good deal of fault with the company there. We've had conversatious of that kind.

Cross-int. 66 Did Mr. Davidson have any syringes made with the bulb joined to the tubes by couplings before he went to California?

Ans. No, sir; not to my knowledge.

Cross-int. 67. Did Mr. Davidson ever say anything to you,
107 or in your hearing, about abandoning or giving up the syringe on account of this difficulty before he went to California?

(Objected to.)

Ans. No, sir; he didn't say anything about abandoning it before he went to California that I recollect of.

Cross-int. 68. Did he have any such conversation with you at any time soon after his return from California?

(Objected to.)

Ans. No, sir; not soon after.

Cross-int. 69. Did he at any time have conversations with you in regard to abandoning the syringe? and if so, when, as near as you can state?

(Objected to.)

Ans. He used to get discouraged, and sometimes damn the thing, but never abandoned it. I couldn't set the time. It was after he went to work there in the shop with me; before he got it perfected; the valves bothered him. It used to bother him, and he'd get out of patience.

Cross-int. 70. Did Davidson at any time give you as a reason for not going on with the manufacture of the syringe any answer substantially like this: "I have got discouraged with the thing?"

(Objected to.)

Ans. I think I've answered that; he used to get discouraged. He did; he frequently got discouraged. I used to laugh at him, and tell him "it was always darkest before day."

Cross-int. 71. Then he didn't get his instrument perfected before he went to California, did he?

Ans. He got it so it would play pretty well. But I don't think he called it perfected.

Cross-int. 72. When first did you see a bulb for a syringe made separate from the tubes?

Ans. That I couldn't say; I couldn't set the date. It was probably not a great while after he came back and went to work in my shop. I couldn't tell what time.

Cross-int. 73. Whose make was the first bulb that you saw made separate from the tube?

Ans. I think it was McBurney's, of Roxbury. I couldn't swear. He had them made there and at Beverly; but I think the first were made at Roxbury.

108 Cross-int. 74. Was the first bulb you saw so made for Mattson or Davidson?

Ans. The first bulb that I ever see made was before he went to California. That was connected with the piping in one piece.

Cross-int. 75. Was the first bulb that you ever saw separate from the tubes, either single or double necked, made for a Mattson or for a Davidson syringe?

Ans. Well, they were so near together that it would puzzle me to tell; but I bought a single necked Mattson. No, I am mistaken about its having a bulb; it was a plunger with a rubber tube, and I have it now. I couldn't tell, in answer to your question, for the life 'o me, which I did see first.

Cross-int. 76. Did you not see a Mattson syringe having an elastic bulb before Davidson came into your shop to work?

Ans. I couldn't say. I might have seen one.

Cross-int. 77. Did you advise Davidson to go into the manufacture of syringes soon after his return from California?

Ans. Yes, sir, I did.

Cross-int. 78. Please state the full conversation you had with him at that time relative to the manufacture of syringes?

(Objected to.)

Ans. He went to work in company, I believe, with Mr. Pattee, varnish-making. He worked with him perhaps three or four months. He then left and went to his cousin's in the country, and painted his house for him. When he got through with that he came down and came into my shop. He was going down to his brother's in Gloucester. His wife was there. He told me he didn't know what he was going to do for a living. I asked him why he didn't go ahead and perfect his syringe—finish it. His reply was, I have no money nor tools to work with. I told him I thought if he went to work and got them introduced into the market, he would make money out of it; that if he was a mind to go to work in my shop, he could have the use of my tools and bench-room, and if he ever made anything out of it, he could pay me something for the use of them; if he didn't, I never should ask him for any pay. He said that was a fair offer, and he would go down and talk with Herman, his brother. He came back in a few days, and said he would take up with the offer. He then went to making moulds for bulbs, separate from the tubing.

109 Cross-int. 79. When was this?

Ans. I couldn't give the exact date. It was when he came back; it was in December, 1855.

Cross-int. 80. How soon thereafter did he make a syringe with the bulb and tubing separate?

Ans. That I couldn't tell. It is impossible for me to give the date when he got the first one done.

Cross-int. 81. Who, if any one, assisted him in the work of making the moulds?

Ans. He didn't have any one to work with him. He worked alone up in the story over my shop. This is on the moulds—casting the moulds. I assisted him in making tools for cutting, packing, and his rubber valves, and such things.

Cross-int. 82. Do you know, of your own knowledge, that said Davidson ever himself made a mould for the bulb of a syringe without the tubes being attached to it in one piece?

Ans. Yes, sir, he did; made a metal one—a casting. I have seen the moulds that he made, and seen him making them; spoiled a good many, but once in a good while got out a good one.

Cross-int. 83. Please to name the workmen employed at your shop, either by you or Davidson, at the time when he made his first moulds.

Ans. There was no one but he and me worked there at the time.

Cross-int. 84. Did you ever see his brother, Herman E. Davidson, and have any conversations with him about syringes?

A. Yes, sir; I have.

Cross-int. 86. When first?

Ans. I couldn't tell you whether I ever had conversation with him regarding syringes before Charles went to California or not. I did afterwards.

Cross-int. 87. Did you testify in the interference case of Alfred C. Garret *v.* Chas. H. & H. E. Davidson, declared by the Patent Office in 1857, or thereabouts?

Ans. I did.

Cross-int. 88. Didn't you state in your testimony at that time that the first knowledge you had of Davidson's making a rubber syringe was in 1853, or words to that effect?

110 (Objected to, the deposition in question being in writing.)

Ans. The first knowledge I had of his making one after his return might have been then. I don't know.

Cross-int. 89. If you did so state at that time, it was correct, was it not?

(Objected to as before.)

Ans. I suppose it was. I think there is some mistake.

Cross-int. 90. Has anything occurred since 1857 to enable you to fix the date of Davidson's invention with more accuracy than you could at that time?

Ans. I've taken more interest in thinking the matter over than I did at that time. I find on my book, when he returned, a minute of what I told him at that time, that he might work in my shop, lest if anything happened to me, my folks wouldn't know whether he owed rent or not.

Adjourned to Friday a. m., at 9 o'clock.

Adjourned to May 3d, at 10 a. m.

Resumed.

MAY 3.

Cross-int. 91. When will you now swear you first saw a completed syringe of Davidson's make, such as is described in your answer to the eleventh, twelfth, thirteenth, fourteenth, and fifteenth interrogatories?

Ans. Previous to January, 1853.

Cross-int. 92. Where is William Fuller now?

Ans. The last I knew of him he was in Clinton, Massachusetts.

Cross-int. 93. Will you swear you sent said Fuller on to work on metals for Davidson's syringes in '52?

Ans. I couldn't say that it was in '52 that I sent him there. He was not the first, I presume, that turned the metal parts.

Cross-int. 94. Who was the first that turned the metal parts?

Ans. I couldn't tell you, sir.

Cross-int. 95. How many rubber syringes were made by or for Mr. Davidson before he went to California? Fix the number accurately.

Ans. I couldn't do it, sir. I don't know.

Cross-int. 96. How many, to the best of your recollection?

111 Ans. I couldn't state any number.

Cross-int. 97. Will you swear you saw as many as six rubber syringes of Davidson's make completed, so as to operate, before he went to California?

A. No, sir.

Cross-int. 98. As many as three?

Ans. I couldn't set the number, sir; it's impossible.

Cross-int. 99. Will you swear you saw more than one?

A. No, sir; I shouldn't want to swear that I saw more than one.

Cross-int. 100. When did Mr. Davidson leave Charlestown for California?

Ans. I couldn't state the time.

Cross-int. 101. In what year and part of the year?

Ans. It was in '53, the summer or forepart of the fall; I couldn't give the date.

Cross-int. 102. When did he return?

Ans. In '55, I think.

Cross-int. 103. In what part of the year?

Ans. I couldn't state.

Cross-int. 104. Have you examined your books, and can you now fix the date of Mr. Davidson's leaving your shop, as mentioned by you in your answer to the nineteenth cross-interrogatory?

Ans. I have not examined my books. I was sick two days, and I didn't know that I had promised to do so. I can't fix the date when he left.

Cross-int. 105. Please produce one of the bulbs which you say in answer to the fifty-sixth cross-interrogatory you had in your posses-

sion, and by which you were enabled to fix the date of the filing of the caveat, that it may be annexed as an exhibit to your deposition.

Ans. The bulb that has the date on Mr. Lockwood has. This ("Complainant's Exhibit 19, N. A. P., examiner,") is the one.

Cross-int. 106. Did Mr. Davidson at any time state to you that he had seen an imported syringe similar to the one he was making, or about to make?

Ans. No, sir; he did not.

112 Cross-int. 107. Did you ever see in his possession a rubber syringe not of his manufacture?

A. Yes, sir; I have.

Cross-int. 108. When first?

Ans. I couldn't tell you the date; it was after Mr. Essex was in company with him.

Cross-int. 109. Describe the instrument.

Ans. I saw one something like one of these, "G" and "J," but which I can't say. It was colored green. That, "D," I never saw in his shop.

Cross-int. 110. Did the first rubber syringe you saw of Davidson's make have valves connected with it?

A. Yes, sir.

Cross-int. 111. Of what were those valves made, and how attached to the syringe?

Ans. I think they were made of metal. They were attached at the outer ends, but how I couldn't explain.

Cross-int. 112. When were the valves changed from the ends of the tubes up to the ends of the bulb in the Davidson syringe?

Ans. I couldn't tell you the date. I made the tools to make the rubber valves. He first used rubber valves in my shop; but when the valves were changed up there, (pointing to the ends of the bulb,) I couldn't tell.

Cross-int. 113. Why were they changed from the ends of the tubes to the ends of the bulb?

Ans. I think he told me that it would take less metal to make the pipes, and that they would operate better.

Cross-int. 114. Did he tell you in what respect they would operate better?

Ans. No, sir; I don't remember that he did.

Cross-int. 115. You say in answer to thirty-eighth direct interrogatory that the valves in those he made after he came back from California differed from those he made before he went there. Describe particularly the difference there spoken of.

Ans. We experimented a good deal before we got a valve to work. The first we made was with a round shot, and that wouldn't work;

113 next was with a hollow conical cone, the same as a Minie ball. I made the die to strike it out. That didn't work; it stuck in the valve seat. I then made a mould to make the valve that is now used. It is like half a ball with a tail in the bottom. We made the rubber valve between the conical valve and the last one I have described. The valve in complainant's Exhibit No. 7 is the one I refer to as like a ball with a little tail.

Cross-int. 116. When did these experiments begin, and when did you succeed in making a valve like the one last described?

Ans. The experiments began immediately upon his commencing making the syringes after his return from California. I can't state the time when the last valve was made.

Cross-int. 117. What was the kind of valve in the first syringe you saw of Davidson's manufacture?

Ans. I couldn't describe it. It was made of metal, I think; I am not positive.

Cross-int. 118. Didn't you examine the instrument carefully?

Ans. I examined the syringe, and recollect of Mr. Davidson's unscrewing something in the end here where the valve was, but I didn't take particular notice.

Cross-int. 119. You say, in answer to eighty-eigth cross-interrogatory, "the first knowledge of his making one after his return might have been then," (1855.) Return from where?

(Objected to.)

Ans. I don't understand the question.

Cross-int. 120. One hundred and nineteenth question repeated.

Ans. I don't understand it.

Cross-int. 121. What do you mean by your answer to the eighty-eighth cross-interrogatory?

Ans. I can't explain it.

Cross-int. 122. Do you mean to fix the date of your first knowledge of Davidson's making a rubber syringe earlier now than you did in your testimony in the interference case?

Ans. I mean to fix the date that I saw one in his shop previous to '53.

Cross-int. 123. Is there any fact, by which you are at the present time able to fix the date of first seeing that instrument with more accuracy than you could in 1857, eight or nine years ago?

Ans. I think there was some mistake at that time, that I
114 must have misunderstood the question, for I certainly did see a syringe in his shop at the time I have stated.

Adjourned to 4 p. m.

Resumed.

Cross-int. 124. Have you made examination of your books, as desired? and if so, will you state when Mr. Davidson left the shop?

Ans. I have examined them, but cannot find out from them as to the time.

Cross-int. 125. When, as nearly as you can remember, did you purchase "the Mattson syringe," referred to in your answer to seventy-fifth cross-interrogatory?

Ans. I couldn't state the date; but I purchased it before Mr. Davidson had finished any in my shop. I hadn't recovered from my fistula when Davidson finished some and gave me one of them. I then threw the other one aside.

Cross-int. 126. Were there any Davidson syringes in the market at the time you purchased the Mattson syringe last referred to?

Ans. Not that I knew of. I never knew that there was any in the market until after he came back from California.

Cross-int. 127. Was not Mr. Davidson occupying the shop with you at the time you purchased said Mattson syringe?

Ans. No, sir; I think not.

Cross-int. 128. Was he not occupying the shop with you when he gave you the syringe referred to in cross-interrogatory one hundred and twenty-fifth, to be used for your fistula?

Ans. He was.

Cross-int. 129. Didn't you purchase the Mattson syringe to be used for the same fistula?

Ans. Yes, sir.

Direct examination resumed.

By Causten Browne, esq.:

Int. 41. Was it before or after Mr. Davidson went to California, that he went into company with Mr. Essex?

Ans. After.

Int. 42. Were any of the syringes of Davidson's make that
115 you saw before he went to California, stamped on the bulb with the date of the filing of the caveat, as "Exhihit 19" is?

Ans. No, sir; I think not. There was a little cross or star formed in the mould. I don't recollect any stamp.

MOSES BABCOCK.

Deposition of Herman E. Davidson, taken, subscribed, and sworn to before N. Austin Parks, esq., examiner, April 28, 1866.—Direct examination.

By Causten Browne, esq., counsel for complainant:

Int. 1. State your name, age, residence, and profession.

Ans. Herman E. Davidson; age, 51; residence, Gloucester, Mass.; profession, physician.

Int. 2. Are you a member of the Massachusetts Medical Society?

Ans. I am.

Int. 3. And a graduate of the Harvard Medical School?

Ans, I am.

Int. 4. Were you a brother of the late Ch. H. Davidson, of Charlestown, and joint applicant with him for the grant of the patent on which this suit is founded?

Ans. I was.

Int. 5. When did Mr. Ch. H. Davidson die?

Ans. In December, 1860.

Int. 6. Did you sign and send to Washington, jointly with Mr. Chas. H. Davidson, the petition for caveat and description annexed, filed 14th July, 1853, of which a certified copy has been put in, marked "Compl'ts Ex., No. 3?"

Ans. I did; the petition was signed January 8th, '53.

Int. 7. Were you then residing in Gloucester, and how long had you resided there?

Ans. I was; I had resided there since the year 1842.

Int. 8. Was your brother then residing in Charlestown, Mass., and how long had he resided there?

Ans. He was; I can't say how long he had resided there, for some years—more than five years.

Int. 9. Will you state the time, as nearly as you can, and the place and the circumstances, of the first conference between Mr.
116 Chas. H. Davidson and yourself upon the subject of the invention to which this caveat relates?

Ans. The time was the latter part of August, 1852; the place, at my residence in Gloucester; the circumstances which led to the conference were, that I experienced the need of a more convenient form of instrument for administering vaginal injections than any with which I was acquainted. I had under my care at that time my sister, Mrs. Delano, of Gloucester, who was suffering with cancer of the womb, a disease in which vaginal injections are frequently necessary. I had provided my patient with the most convenient instrument that I knew of at that time. This was a syringe made with an elastic rubber sac, having inserted into one side of it a vaginal pipe. This instrument did not contain a sufficient quantity of fluid required for injection at one time, and therefore had to be replenished in order to make the injection effectual. This was attended with much pain and discomfort to the patient. My brother's business at that time was that of machinist.

Int. 10. How long had your sister been suffering from the disease you mention?

Ans. For more than a year, probably.

Int. 11. How was the syringe she had been using replenished?

Ans. It was withdrawn from the part, the walls of the sac compressed, so as to bring the sides in contact as nearly as possible, expelling the air; the extremity of the pipe inserted into the fluid to be injected, and the walls of the instrument then allowed to expand by their elastic force, the atmospheric pressure forcing the fluid into the rubber bag.

Int. 12. You say the first conference with your brother upon the subject inquired of took place in the latter part of August, 1852. What, if any, circumstance is there by which you fix upon the month of August of that year?

Ans. The fact of my brother's children being with me, at my mother's house, at the time, which occurred only at that season of the year, when they were accustomed to pass the holidays of the public schools with their grandmother. They were at the public schools in Charlestown, and were accustomed to return about the first of September to school, or earlier. A further circumstance, that my brother's wife was visiting us at the same time, and that my brother
117 came down to see his wife—to visit her—at that time, and the conference that led to the invention then took place.

Int. 13. Now state what was said between you in that conference upon the subject of an improved syringe; and what, if anything, was

done at that conference, or any other in that month of August, at Gloucester, relating to the same subject; stating each thing said or done as nearly as your recollection will enable you to do, in the order of the occurrence.

Ans. It is now nearly fourteen years since that occurred. I expressed to my brother the want that I felt of a more convenient and effectual form of syringe than the one that I was using. I exhibited to him the instrument at that time employed by the patient. He suggested that he believed an instrument could be made with a rubber sac that could draw and deliver the injection without any necessity for its removal. He drew upon a paper at the time a plan of the method that he proposed to employ. It was a pencil sketch, and was not, to my knowledge, preserved. I can better describe what I wish to by means of a diagram—make it more intelligible. [The diagram is here produced by the witness, marked "Complainant's Exhibit 11, N. A. P., ex'r."] A represents a rubber sac of a spheroidal shape—so far as my recollection serves; it was elongated—it was not a perfect sphere. F is a screw by which the metallic part H was to be connected with the sac. The metallic part consisted of a vertical pipe from which proceeded at one side a horizontal pipe; the extremity of the horizontal pipe was to be provided with a valve box containing a valve D opening outward; the lower extremity of the vertical pipe was to be provided with a valve E opening upwards towards the sac. To the valve box, at the extremity of the horizontal pipe, was to be attached a piece of rubber tubing B, connecting with an injection pipe G at its extremity. At the lower extremity of the vertical pipe was to be attached a piece of India rubber tubing C, the lower end of which was to be introduced into the fluid used for injecting. My brother accompanied his diagram by explanations of how it was to work; he said that by introducing the extremity of the pipe C into the fluid for injection, and by alternate compression and expansion of the bag A the fluid would be drawn through the valve box E opening upward, and expelled through the valve box D opening
118 outward in the direction of the part to be injected. The compression of the sac will close E and open D. The expansion produces the reverse effect. Either at this time, or within a day or two, in considering his suggestion and the diagram, it occurred to me that a more simple and better form of instrument could be made by having a rubber sac constructed with two orifices on opposite sides of the sac, or to have the sac made with pipes of rubber, or part of the central sac; the extremities of the pipes to be provided with induction and injection valves. This suggestion met my brother's entire approbation. We believed that a syringe constructed in the way that I suggested would be a very valuable invention, and proposed to perfect the instrument so as to obtain a patent for it at the earliest practicable moment. Meantime, as my sister was in immediate want of a better syringe than she was using, I proposed that my brother should take the sac to his machine shop in Charlestown, and produce with it an instrument such as he had given me a diagram and explanation of; and I told him that I would go to work and

get up a model for such an instrument as I had proposed to have made—I mean with the two orifices in the sac or with the tubes proceeding from the opposite sides of the sac. That constitutes what was said and done by us at that time so far as I can recall what took place.

Adjourned to Monday at 9½, A. D.

Resumed.

Int. 14. Did you, after your brother and his family returned to Charlestown from Gloucester, do anything in regard to what you considered the improved form of rubber syringe, viz, the double-necked form? If yea, what did you do and when was it?

Ans. I did; shortly after my brother left, I procured a round Para rubber bag—I mean such as had not yet been vulcanized—with one neck; opposite this neck I made a hole and procured two tin pipes and inserted one into each of the orifices in the bag—the one that I had made and the one that previously existed. To these I attached two separate pieces of rubber tubing, and to the other ends of the rubber tubes I adapted valves boxes made of tin, wood and rubber. This was during the month of September, 1852.

119 Int. 15. What did you do with this intrument you so made, and what afterwards became of it, to the best of your knowledge?

Ans. About the last of September, I carried the instrument to Charlestown, to my brother's machine shop, and showed it to him. He examined the instrument and tried it. The valves did not work very well and he thought that some improvement could be made in the form of them. He also remarked upon the shape of the bulb —that it would be better made of an oval form. I replied "yes, that is what I remarked regarding the other form of syringe." I think that he retained the instrument—I left it with him. I don't know what became of it after I left it with him; I can't recall. I don't remember that I've ever seen it since.

Int. 16. You say that you replied to your brother that you had yourself "remarked regarding the other form of syringe" that the bulb should be more of an oval shape. Had you made that remark to him? If so, what was the occasion of it? what was the form which he had when you made the remark?

(Objected to as leading.)

Ans. I did. I had made the remark to him on the occasion of the original conference. I think the form he had then was nearly spherical; the form that he had in his drawing, and which I think was taken from the instrument which my sister had been using.

Int. 17. What, if anything, did your brother Charles do, after leaving Gloucester, in pursuance of the plan he had sketched and described to you at Gloucester?

Ans. He proceeded to make an instrument similar to the one that he had sketched.

Int. 18. What was done with the instrument which he so made?

Ans. It was brought by him or sent to Gloucester. It was used by

my sister, Mrs. Delano, from that time until the following February, (1853.)

Int. 19. Was it used in connection with any other implement? if so, what? Describe the manner of its use.

Ans. The syringe was used in connection with a glass specie jar of the capacity of perhaps a quart or more. This jar was provided with a metallic cap, and through the centre of this cap was a hole cut, through which a portion of the vertical part of the pipe
120 entered and was secured. It was used by putting the fluid for injection into the glass jar. The nurse then held the jar with the instrument in convenient proximity to the patient, who lay in bed, resting on a bed-pan; the patient, introducing the vaginal pipe, used the instrument in this position.

Int. 20. Was the instrument arranged in any way in connection with the bed-pan? If so, how was that?

Ans. It was not so originally. Sometime in October—I think the early part of October—I wrote to my brother, and told him that I wanted him to have made for my sister's use a bed-pan that could be used in connection with the instrument. I think that I sent him a diagram of such a bed-pan as I desired to have made. It was to be made in the form of a slipper elongated at the heel, and with an orifice at the heel part of it adopted for the reception of the glass jar.

Int. 21. Was such bed-pan made accordingly?

Ans. It was.

Int. 22. After this instrument ceased to be used in February, 1853, what became of it?

Ans. The bed-pan was deposited in the attic. The other parts of the instrument were knocking about the house for some years. Only one part part of it have I been able to recover. That was found among my brother's effects after his death.

Int. 23. Can you produce the bed-pan and the part of the syringe which you say you have been able to recover?

Ans. The bed-pan is that one shown me, labelled "Complainant's Exhibit No. 8." The part of the syringe inquired of I now produce. It is marked "Complainant's Exhibit No. 12, N. A. Parks, ex'r." It is part of the original syringe that connected with the mouth of the original bulb of the syringe that my sister was using. The plain metal tube was connected with the pipe through which the injection was to be delivered; or rather connected with an armature—something that has been lost, which constituted a valve box, the valve opening outwards.

Int. 24. What was the valve box connected with?

Ans. With a missing piece of metal that was screwed into it.

Int. 25. With what was this missing piece of metal connected?

Ans. With a rubber tube.

Int. 26. What rubber tube?

121 Ans. A tube to convey fluid from the rubber receptacle to a pipe designed to be introduced into the anus or vagina.

Int. 27. About how long was this rubber tube?

Ans. About two feet, I should judge; perhaps more.

Int. 28. With what was the shorter one of the two arms having screw threads cut upon them connected?

Ans. With the mouth of the rubber bag.

Int. 29. With what was the longer one of those two arms connected?

Ans. It was provided with means of connection to the metallic cap of the jar and with another missing metal part that was connected with a piece of rubber tube designed to be used for drawing fluid to be injected into the rubber sac.

Int. 30. Was there any valve about this part of the apparatus? and if so, where was it, and what sort of valve was it?

(Objected to as leading.)

Ans. There was; the valve was in a chamber formed between the missing part and that present. It was (so far as I can recall, I'm not very clear,) a slip of rubber pinned to the hub of a little metallic wheel, with spokes so arranged that pressure towards the sac would open the valve and allow fluid to pass in that direction.

Int. 31. Can you produce a model showing the syringe and the glass jar as they were constructed and arranged together for use?

Ans. I can; I here produce it, marked "Compl'ts Exhibit No. 13, N. A. Parks, ex'r."

(Introduction of Exhibit "13" objected to.)

Int. 32. As the instrument was used in connection with the bed-pan, where was the glass jar put after it had been filled with the enema?

Ans. It was put in the hole in the heel of bed-pan.

Int. 33. Was the syringe, including the glass jar, sent to Gloucester by your brother, together with the bed-pan, or before the bed-pan was sent?

(Objected to as leading. Question withdrawn.)

Int. 34. Which was sent or brought to Gloucester by your brother first, if either, the syringe apparatus or the bed-pan?

Ans. The syringe.

Int. 35. Do you know why your brother made the induction tube, or that through which the enema is drawn up into the sac, flexible?

Would not an inflexible tube, leading down into the glass jar
122 of enema, have answered every purpose in the apparatus represented by Exhibits "8" and "13."?

Ans. I do; for the purpose of using the instrument without the glass jar, introducing the end of the induction tube into any form of vessel for the purpose of drawing up the fluid. An inflexible tube in apparatus "8" and "13," as inquired of, would, in my opinion, have answered every purpose.

Int. 36. Did you make any use of the syringe apparatus marked "Exhibit No. 13," at any time, in the case of any other patient besides your sister?

Ans. I made use of it in one case upon a patient. My brother used it, and I used it myself.

Int. 37. As used by you upon this other patient, and in your own case, was it used with or without the glass jar?

Ans. It was used upon the patient without the jar. I can't recall whether with or without the jar in my own case.

Int. 38. Who was this other patient, and when, as nearly as you can remember, did he use it?

Ans. The name of the patient was Charles Liscomb. I believe he used it in February, 1853. I can't recall the day.

Int. 39. Was the syringe apparatus, including the glass jar, sent or brought to Gloucester by your brother the first time, before or after you wrote to him, as you have mentioned, requesting him to have the bed-pan made?

Ans. It was before the bed-pan was ordered or thought of.

Int. 40. When your sister discontinued the use of this apparatus in February, 1853, what, if anything, did she begin to use in place of it?

Ans. A rubber syringe, consisting of a rubber sac of oval form, extending into two rubber tubes from the ends of its longer axis, the termination of these tubes provided with valve boxes for induction and ejection, the ejection valve box made so as to connect with either a vaginal or anal pipe.

Int. 41. Who made this syringe?

Ans. The rubber part was made by the Union Rubber Company, New York. It was connected with the valve boxes by my brother.

123 Int. 42. Was it made before or after the caveat was filed in January, 1853?

(Objected to as leading.)

Ans. I think after the filing of the caveat.

Int. 43. Were any syringes of this construction, viz: with oval bulb and two rubber tubes connected with it at opposite ends, made by your brother before the filing of the caveat?

Ans. I can't remember.

Int. 44. To whom, if any one, did your brother charge his labor and stock used in getting up the syringe with the glass jar?

Ans. That is what I can't remember now. My impression is, to me.

Int. 45. Did your brother, after the caveat was filed, go to California? If so, state when he went, as nearly as you can, and when he returned.

Ans. He did go to California, in June, 1853, and returned in February, 1855. He was gone twenty months.

Int. 46. When did your brother die?

Ans. In December, 1860.

Int. 47. Who, besides yourself, belonged to your household in Gloucester during the time from August, 1852, to the end of '53?

Ans. My mother, my sister, Mrs. Delano, and Miss Clarissa Hayes, a domestic.

Int. 48. Are any of these persons now living?

Ans. None of them.

Int. 49. Before your brother went to California, did he make, or cause to be made, any rubber syringes having an oval bulb and two flexible tubes, provided with induction and eduction valves, besides the two you have mentioned as having been used by your sister?

(Objected to as leading.)

Ans. It is my impression that he did.

Int. 50. State, as nearly as you can, how many such syringes he made, or caused to be made, before he went to California.

Ans. It is very difficult to form an estimate. I can't recall exactly; perhaps a dozen.

Int. Were they made with the rubber tubes coupled to the bulb, or were the tubes and bulb in one piece of rubber?

(Objected to.)

Ans. Tubes and bulb in one piece of rubber.

124 Int. 52. Were these syringes so made before he went to California satisfactory in construction and operation? and if not, what was the difficulty?

Ans. They were not satisfactory in construction or operation; the difficulty was in the quality of the rubber parts received from the Union Rubber Co., of New York, and the construction of the valves.

Int. 53. In the double-necked syringes, so made before your brother went to California, how were the valves situated as regards the induction and delivery metal pieces at the outer ends of the rubber tubes?

Ans. In connection with those tubes.

Int. 54. Were they part of the inner end of the connection; that is, the end next the bulb, or at the outer end; that is, the end next the pipe?

(Objected to as leading.)

Ans. The end next the pipe.

Int. 55. What, if anything, was sent to the Union Rubber Co. to make the rubber work of the double-necked syringes by?

Ans. Metallic moulds. Block tin or antimony mainly.

Int. 56. Please state the circumstances which led to your brother's going to California.

(Objected to as impertinent.)

Ans. My brother was persuaded to go to California by a friend who had resided there for some time. He, my brother, had not succeeded in his business, that of machinest, and thought that he might improve his fortunes by going out with this friend.

Int. 57. What was your brother's pecuniary condition from the fall of 1852 down to 1857?

Ans. I should call it quite poor.

Int. 58. Did your brother make any efforts, and if so, what, either before he went to California or after he returned, to obtain assistance or co-operation in the matter of introducing the syringes into the market and carrying on the business?

Ans. His efforts were mainly directed towards the perfection of the instrument. The instrument was not sufficiently advanced to enable him to introduce it into the market.

Int. 59. What did he do in regard to the rubber syringes, after he returned from California?

Ans. I think it was in the latter part of '55, or early part of

125 '56, that he again took hold of the instrument to perfect it and introduce it into the market.

Int. 60. What alterations did he then make in the mode of construction of his syringe?

Ans. He had the bulbs and rubber pipe made in separate parts, and made changes in the valve boxes, introducing the valve boxes into the metallic couplings connecting the bulb with the rubber pipe; also some changes in the character or structure of the valve.

Int. 61. What was your brother doing while he was in California? State from the letters you received from him and from the knowledge current in the family.

(Question objected to, the letters being in writing, and the other part not shown to be within witness' knowledge.)

Ans. He stated that he was engaged at different times in various mechanical occupations, among others the manufacture of pack-saddles for mules, the repair of guns, pistols, and fire-arms generally.

(Objected to as hearsay.)

Int. 62. Was the operation of the glass jar and bed-pan syringe apparatus, and of the double-necked syringe, which were used by your sister during her illness, in all respects satisfactory? If not, what was the difficulty?

Ans. They were not satisfactory. The difficulty resided in the valves, which were very apt to get out of order, requiring frequent attendance to them.

Int. 63. You state that after your brother's return from California he took up the instrument and made certain improvements in it. What was the effect of those improvements upon the efficiency of the instrument?

Ans. To improve the efficiency of the instrument.

Int. 64. How soon after those improvements were made did your brother introduce the syringes into the market?

Ans. My impression is, very soon after.

Int. 65. What was your brother's intention, from the time he made his first double-necked syringe, in 1853, down to the time when he made the improvements mentioned, and introduced the instruments into the market, as to pursuing the enterprise and perfecting the instrument and securing the patent therefor?

126 State what he said or did, from time to time, during that period, indicating his intention in this respect.

(Objected to.)

Ans. After his return from California, and his attention was called again to the instrument, he felt sanguine that he could make a profitable thing of the business; but his immediate want turned his attention in other directions, until he took hold of the instrument in '56, when he gave his entire attention to it from that time until his securing the patent and his sale of his interest in the business.

Int. 66. How much of his time and attention did he give to the syringe during the year '53, before he went to California?

Ans. As much as he could bestow upon it, having other business to attend to at the same time. He went on to New York to ascertain how the moulds should be constructed for the rubber parts, and from that time until he had made up his mind to go to California he worked upon the moulds for the rubber parts and the valves.

Int. 67. While he was absent in California, what, if anything, did you do to further the perfecting and introducing of the instrument?

Ans. I entered into an agreement with Mr. J. F. Leech, of Boston, by which he was to manufacture the syringe and introduce it into the market, and receive one-half of the profits of the sales. Mr. Leech did not succeed in getting the instrument manufactured. I corresponded frequently with him on the subject during the year 1853; saw him occasionally. He was unable to procure the rubber parts from the Union Co. of N York, of satisfactory quality. The valves also occasioned him trouble. He had made no progress in the spring of 1854. I then corresponded with Dr. Joseph Reynolds, of Concord, Mass., to whom I had previously spoken of the syringe, asking his attention to it, and inviting him to take hold of it with me. From this time a correspondence took place between Dr. Reynolds and myself. He visited Boston, went to Mr. Leech's place of business, examined the state of the instrument, the moulds, etc., received the impression that he could do nothing with the moulds in their present state, and finally gave up the matter, abandoned it.

Int. 68. You have stated your impression that your brother charged his early work on syringes, before he went to California, to you; does this apply to the single-neck syringe with the glass jar attached?

Ans. I think not.

127 Int. 69. How was it about that?

Ans. The instrument was made for the use of my sister, Mrs. Delano, and was designed as a present to her. I derive this impression from the recollection of a scene that occurred in my sister's bed chamber on a visit of my brother and his wife to my mother, on Thanksgiving day, 1852. She expressed great gratitude for his kindness in having put himself to so much trouble in making the instrument for her.

(From the words "She expressed great," &c., to the end of the answer, objected to as hearsay,)

Int. 70. Are the entries in the account book now shown you made in your brother's handwriting?

Ans. Yes, sir.

The account book is produced marked "Compl't's Exhibit No. 14. N. A. P., exr."

Int. 71. Do you remember whether or not the sketch you made in 1852, of the double-necked syringe was sent to the Patent Office at Washington or not, with a deposition you gave in an interference between your brother and yourself and one Garrett?

Ans. Yes, sir, it was sent.

Int. 72. Can you now produce a copy of that sketch?

Ans. This is a copy of the sketch. (Compl't's Exhibit No. 15. N. A. P., ex'r.)

Int. 73. Did you send to your brother, in '52, together with the sketch, a written description explanatory of it?

Ans. I did.

Int. 74. What became of the original of it?

Ans. That is more than I can remember.

Int. 75. Can you produce a copy of it?

Ans. I can; this is a copy. (Compl't's Exhibit No. 16. N. A. P., ex'r.)

(Introduction of this Exhibit objected to, the original not being shown to be lost.)

Adjourned to 2½ P. M.

128 *Cross-examination.*

By A. F. Badger, esq.

Cross-int. 1. You speak in answer to ninth interrogatory of an instrument, provided by you for use by your sister, as patient, prior to the first conference between you and your brother Charles, relative to the invention spoken of in that interrogatory. Please to give a minute description of that instrument in all its parts, of the size of its various parts, and the method of use.

Ans. The instrument consisted of a rubber sac or bag, of spheroidal form, having one orifice into which was affixed a mouth-piece of bone or horn, provided with a screw, to which a vaginal pipe could be screwed. The size of the bag, I should judge, about the size of my fist. The size of the vaginal pipe, perhaps, half an inch in diameter.

Cross-int. 2. What was the length of the instrument from the end of the sac to the extremity of the vaginal pipe?

Ans. I cannot recall if I ever took the measure of it.

Cross-int. 3. Please state, to the best of your judgment and recollection, the length of the whole instrument.

Ans. Perhaps eight inches; it may have been more or less.

Cross-int. 4. Of what material was the vaginal pipe made?

Ans. Of horn or bone.

Cross-int. 5. Where did you obtain said instrument, and who was the maker?

Ans. It was, I think, obtained in Boston; the maker's name I am ignorant of.

Cross-int. 6. Where is that instrument now?

Ans. I don't know.

Cross-int. 7. How long since have you seen it?

Ans. Not for many years, I think.

Cross-int. 8. Had you, previous to that conference with your brother, ever seen any other instrument having a rubber sac, or bulb, designed to be used for injecting enema of any sort?

(Objected to.)

Ans. I think that I had, of similar form.

Cross-int. 9. When and where?

Ans. I think in Gloucester; I can't remember when.

Cross-int. 10. How many instruments of any sort, having
129 as a part thereof a rubber sac or bag, and constructed to operate as an injecting instrument, had you seen previous to that time, and where?

(Objected to.)

Ans. I can't tell how many I had seen.

Cross-int. 11. Had you seen as many as six?

Ans. I shouldn't be willing to assert that I had seen that many. My memory does not serve me on that point.

Cross-int. 12. Had you seen as many as four?

Ans. The same reply.

Cross-int. 13. Had you, prior to the conference with your brother in August, '52, ever seen an instrument having a bulb or chamber, any part which was elastic and connected thereto one or more flexible tubes, with suitable valves, the whole so organized as to operate as an injection instrument?

(Objected to.)

Ans. I had not.

Cross-int. 14. You visited the surgical instrument shops in Boston occasionally at that time, did you not?

Ans. Rarely.

Cross-int. 15. Have you stated in full all the facts or data that enable you to fix the date of your first conference with your brother in regard to rubber syringes?

Ans. The further fact that my brother left with his wife and the children and returned to Charlestown at that time.

Cross-int. 16. Is there anything else which enables you to fix the date of that conference?

Ans. I can recall nothing now.

Cross-int. 17. Have you any book or memoranda in writing which enable you to fix the date?

Ans. I know of none.

Cross-int. 18. Were your brother and his family in the habit of visiting Gloucester every summer?

Ans. Generally every summer; I think they were.

Cross-int. 19. Might not this conference then have taken place in the summer of 1851?

Ans. No, sir.

Cross-int. 20. Why not?

Ans. My sister was not ill in 1851, requiring any such instrument.

130 Cross-int. 21. Might it not have occurred in the summer of '53? and if not, why not?

Ans. It could not have occurred in the summer of '53, because the conference took place prior to my sister's death, which was in April, 1853, and prior to the filing of the caveat, which took place January 8th, 1853.

Cross-int. 22. You say in answer to thirteenth interrogatory that your brother made a sketch of the instrument he proposed to make. Is diagram, marked "Compl'ts Exhibit No. 11" a substantially correct copy of the sketch made by your brother at that time?

Ans. I think that it is. Perhaps the relation of the parts may not be correct; but substantially and in principle it is.

Cross-int. 23. You say in your description of that diagram that F is a screw by which the metallic part H was to be connected with the sac? Did your brother tell you at that time that F was a screw?

Ans. I can't say whether he told me that it was a screw. I presume that he did; it represents a screw.

Cross-int. 24. Did he tell you that H was a metallic part?

Ans. He said that H was to be made of metal.

Cross-int. 25. Did he state how long the metallic part H should be made?

Ans. I can't recollect that he did.

Cross-int. 26. Are you willing to swear that your brother, at any time in 1852, described to you an instrument having valves substantially as described by you in answer to the thirteenth direct interrogatory?

Ans. I am.

Cross-int. 27. Did he describe the kind of valves to be used?

Ans. I think not.

Cross-int. 28. Did he tell you where those valves were to be located?

Ans. He did.

Adjourned to May 1st, at 9 a. m.

131 *Resumed.*

Cross-int. 29. Had you ever, prior to the conference with your brother in '52, seen any rubber syringe of different pattern from the one you provided for the use of your sister?

(Objected to.)

Ans. To the best of my recollection, no.

Cross-int. 30. Will you swear you had not?

Ans. I can swear only to the answer I have made to the question.

Cross-int. 31. Did you at any time, within six months of that conference, see any rubber syringe of different pattern, in any particular, from that used by your sister?

Ans. Yes.

Cross-int. 32. How many and where?

Ans. One, in Boston.

Cross-int. 33. Where in Boston, and in whose possession?

Ans. At the office of Dr. Calvin Ellis, and in his possession.

Cross-int. 34. Fix the time, as accurately as you can, when you first saw the instrument last spoken of in the hands of Dr. Ellis?

Ans. As near as I can recollect, in the month of October, 1852.

Cross-int. 35. Describe the instrument.

Ans. It was one similar to that, "deft's Exhibit D."

Cross-int. 36. Did you have conversation with Dr. Ellis at that time relative to this instrument, and the one you say you had made?

Ans. I had a conversation with him relative to the instrument like "Exhibit D," but cannot remember that I had any relative to the one I had made.

Cross-int. 37. Calling your attention to the Para rubber bag spoken of in answer to fourteenth interrogatory, what were the dimensions of the bag, the thickness of the rubber, and where did you obtain it?

Ans. So far as I can remember, the bag was about the size of my fist, if anything, I should say of less size. The thickness of the walls of the bag I cannot accurately recall. I procured the bag from Dr. Joseph Reynolds, of Gloucester.

Cross-int. 38. What was the shape of the bag?

Ans. Spherical.

132 Cross-int. 39. Had it sufficient elasticity to regain its spherical form immediately after being compressed by the hand?

Ans. Yes.

Cross-int. 40. You speak of tin pipes in connection with that bag, what were their dimensions, shape, and who, if you know, made them, and where they were made?

Ans. So far as I can recollect, the diameter was that of a large quill, the length between one and two inches, the shape cylindrical. I don't remember who made them; they were made by a tin-plate worker in Gloucester.

Cross-int. 41. Were they a plain cylinder?

Ans. They were.

Cross-int. 42. Of what material were the valves to this instrument, and how constructed?

Ans. They were of tin, wood, and rubber, constructed of a wooden seat, (a cylindrical piece of wood,) to which was attached a slip of rubber closing an orifice through the wood; the valve box was of tin. The valve box, substantially as I constructed it, is represented in "compl't's Exhibit No. 15," where "1" represents the valve attached to the valve seat—a front view of it; "3" a lateral view of the same valve in position. This was enclosed in a cylinderical tin box having two tin pipes in the heads of the cylinder.

Cross-int. 43. Will you swear that you made valves to the instrument described by you in answer to fourteenth direct interrogatory as made in the month of September, '52, exactly like those described in your last answer, and shown in compl't's Exhibit No. 15?

Ans. As near as I can recollect, yes.

Cross-int. 44. Who saw this instrument in '52? Please to name every person that you know saw it, and where they saw it.

Ans. Two persons I distinctly recall, Dr. Chas. Hildreth, of Gloucester, and Mr. Chas. Davidson, my brother. Dr. Hildreth saw it in Gloucester—my brother in Charlestown, I think.

Cross-int. 45. Is Dr. Hildreth now living? and if yea, where?

Ans. He is, in Gloucester.

Cross-int. 46. Did this instrument, as made by you in '52, have flexible tubes?

Ans. It had.

133 Cross-int. 47. How were they joined to the bag?

Ans. They were joined to it by means of the tin tubes that I have already described.

Cross-int 48. How were they attached to the tin tubes?

Ans. The tin tubes were introduced into the ends of the flexible tubes, and a leashing was applied around to secure the rubber tubes to the tin.

Cross-int. 49. Where were the valve and valve boxes placed?

Ans. At the extremities of the flexible tubes—most remote from the rubber sac.

Cross-int. 50. Why did not these valves work well?

Ans. On account of their formation. They required to be held in a certain position in order to work well, so that the gravitation of the valve would have to co-operate with the pressure of the fluid. In certain positions they operated very well.

Crost-int. 51. In answer to the fifteenth interrogatory you say when you showed the instrument to your brother in his machine shop in Charlestown, "he also remarked upon the shape of the bulb, that it would be better made of an oval form." I replied, "Yes, that is what I remarked regarding the other form of syringe." What other form of syringe do you there refer to?

Ans. The syringe with a single neck suggested by my brother.

Cross-int. 52. When was that instrument last referred to suggested to you by your brother?

Ans. In the latter part of August, 1852.

Cross-int. 53. How many persons were employed at your brother's machine shop at the time you showed him the instrument, in 1852?

Ans. I cannot tell.

Cross-int. 54. Did you see any person or person there at that time?

Ans. My impression is that I did.

Cross-int. 55. How many, to the best of your recollection?

Ans. Perhaps half a dozen.

Cross-int. 56. May there not have been more than that number employed there at that time?

Ans. Yes.

Cross-int. 57. In answer to the seventeenth direct interrogatory you say "he" (referring to your brother,) proceeded to make
134 an instrument similar to the one he had sketched." Give a minute description of all the various parts of that instrument as made by your brother, and how they were joined together.

(Objected to because the witness has produced a copy of the sketch made by his brother, has stated the explanation given by his brother of the intended construction and operation of the thing so sketched, and has produced a model representing that thing.)

(Counsel for defendants insists upon an answer to the question, alleging that the witness had not produced a copy of the sketch made by his brother, but a sketch made by him at the present time, and that the model produced does not appear to have been made at the time referred to.)

Ans. The instrument consisted of a rubber bag, and was attached by a screw to a metal part having three orifices connected with each other, the two orifices—besides that connected with the rubber sac—connecting with flexible rubber tubes. This metallic part was also made to screw into the metallic top of a glass jar. Two of the orifices of the metallic part were provided with valves for injection towards the sac, and ejection from it. Substantially, I believe, I have

described the instrument. Without a diagram it is not very easy to do so.

Cross-int. 58. The valves, then, of this instrument were placed at the extremity of the flexible tubes, next to the bulb or sac, were they not?

Ans. They were.

Cross-int. 59. In answer to the twenty-third interrogatory, you say you "now produce a part of the syringe inquired of, marked 'compl'ts Exhibit No. 12.' " Do you mean to swear that Exhibit No. 12 is a part of the identical instrument used by your sister in '52 and '53?

Ans. I swear that I so believe it.

Cross-int. 60. Has it been in your possession all of the time since it was used by your sister?

Ans. It has not.

Cross-int. 61. How then can you swear of your own knowledge that it is a part of the identical instrument used by your sister in '52?

Ans. I swear that I so believe it because it precisely resembles it.

Cross-int. 62. My question is not "do you so believe it," but do you know that Exhibit No: 12 is a part of the instrument used by your sister in 1852?

135 Ans. I can't swear that the sun that rose this morning is the same that rose yesterday morning; but I so believe it.

Cross-int. 63. Is there any mark upon Exhibit No. 12 by which you are able to identify it as part of the instrument used by your sister in '52?

Ans. I discover no mark.

Cross-int. 64. Then this may be another piece made like the one in the instrument used by your sister in '52, for anything you know to the contrary, may it not?

Ans. It may be, but it is not at all probable.

Cross-int. 65. Why not at all probable.

Ans. Because I can conceive of no circumstances that would have occasioned this piece of metal, which is precisely like the one originally made by my brother, (and is, I believe, the same,) to be other than I believe it, found where I found it, and having been where it has.

Cross-int. 66. Where did you find it and where has it been, as referred to in your last answer?

Ans. I found it among my brother's effects. It has been since last winter in the possession of my nephew, Hamilton D. Lockwood.

Cross-int. 67. Where was it from February, '53, when you say your sister abandoned the use of it, up to last winter?

Ans. For some years it was at my house in Gloucester. It then disappeared—I can't say when it disappeared from my observation—and was found among my brother's effects at the time of his decease.

Cross-int. 68. Then you do not know that Exhibit 12 was transferred from your house to your brother's shop in Charlestown, otherwise than by its being found among your brother's effects and your believing it to be a part of the instrument used by your sister, do you?

Ans. I made no reference to its being transferred to my brother's house in Charlestown, that I know of.

Cross-int. 69. Where was "Compl't's, Exhibit No. 12" found among your brother's effects?

Ans. It was found in a box with other pieces of metal in Gloucester.

Cross-int. 70. What other pieces of metal?

Ans. So far as my recollection serves, some pieces of lead, I think for fish lines—various forms of metal—pieces of lead and block
136 tin, I think some anal and vaginal pipes and parts connected with syringes such as he had manufactured.

Cross-int. 71. In answer to thirtieth interrogatory you speak of the hub of a little metallic wheel with spokes. Please explain what you mean and how they operated.

Ans. The valve seat, as far as I can recollect, represented a wheel with three or four spokes converging to a hub—a circular disc of rubber was pinned by its centre to the centre of this hub; the disc covering the spaces between the spokes and circumference of the wheel. Pressure in one direction elevated the circumference of the rubber disc, allowing fluid to flow in that direction. Pressure in the opposite direction, closed the before named spaces.

Cross-int. 72. When did you first see "Compl'ts Exhibit No. 12," and where?

Ans. Within a week, in Charlestown.

Cross-int. 73. Who made "Exhibit No. 12?"

Ans. I do not know.

Cross-int. 74. When was it made?

Ans. I do not know.

Cross-int. 75. Did you give any direction regarding the making of this, or any instrument substantially like it, before you saw this in Charlestown within a week?

Ans. I think not.

Cross-int. 76. Have you ever made any suggestions about the preparation of an instrument substantially like "Exhibit No. 13" since the first conference with your brother on the subject of syringes in 1862?

(Objected to.)

Ans. I can recall no other suggestion excepting the one made to my brother at that conference relative to a better form of the sac.

Cross-int. 77. In answer to thirty-fifth interrogatory you say you know why your brother made the induction tube flexible. How do you know why he made it flexible in the instrument there referred to?

Ans. I know it from his statement.

Cross-int. 78. In answer to thirty-eighth interrogatory you say Charles Liscomb was a patient on whom this instrument was used. Is he now living? and if yea, where does he reside?

Ans. I cannot tell.

137 Cross-int. 79. When did you last see or have knowledge of him?

Ans. In May or June, 1853.

Cross-int. 80. Did he, at or about that time, leave Gloucester?

Ans. About that time he left Massachusetts and went to California.

Cross-int. 81. In interrogatory forty-one you speak of the Union Company of New York making the rubber. How do you know who made the rubber parts and who made the valves and boxes?

Ans. I know from my brother's information.

Cross-int. 82. When was this instrument spoken of in answer to forty-first interrogatory made? Fix the time accurately.

Ans. As near as I can recollect, in the latter part of January or February, 1853.

Cross-int. 83. When was it received at Gloucester?

Ans. I believe in February, 1853.

Cross-int. 84. Did you see the caveat which you say was filed in January, 1853, before it was filed? and if yea, when and where for the first time?

Ans. I think I must have seen it before January 8th, 1853; when, I do not remember.

Cross-int. 85. Do you know who drew the instrument?

Ans. I believe Merriam & Crosby. I am not sure; that is my impression.

Cross-int. 86. Where was the caveat signed?

Ans. In Gloucester, or Charlestown, or Boston; one of those places.

Cross-int. 87. In answer to the fifty-second interrogatory you say, "they" (referring to the syringes made before your brother went to California,) "were not satisfactory in construction or operation. The difficulty was in the quality of the rubber parts received from New York, and in the construction of the valves." What was the difficulty in the rubber parts?

Ans. It was the brittleness of the material, the rubber breaking in many of them, and the tubes were unequally cast, the rubber in many being too thin at the extremity of the tubes.

Cross-int. 87½. What was the difficulty in the construction of the valves referred to in that answer?

Ans. I can't remember the precise difficulty; they did not work well.

138 Cross-int. 88. Were any syringes made with the valves at the ends of the flexible tubes, next to the bulb, before your brother went to California?

Ans. I do not know; I never saw any so made before that time.

Cross-int. 89. When first were they made with the valves between the bulb and tubing?

Ans. I believe in 1856.

Cross-int. 90. Was the removal of the valves from the outer ends of the flexible tubes to the ends of the bulb considered by you an improvement in the instrument?

(Objected to.)

Ans. It was considered by me an improvement in facilitating the construction of the instrument.

Cross-int. 91. Why were the valves so removed?

Ans. I cannot tell, unless for this reason; to facilitate the construction of the instrument.

Cross-int. 92. Did not the removal of the valves from the outer extremities of the flexible tubes up to the ends of the bulb improve the working of the instrument in use?

Ans. I cannot say that it did.

Cross-int. 93. Was not this the fact that the tubes were made of so thin an elastic rubber that when the bulb was suddenly compressed the liquid contained therein would expand or puff out some parts of the smaller tubes, instead of passing out through the valve and delivery pipe?

Ans. That would depend altogether upon the relative size of the orifices of the valve and delivery pipe. If the orifice of the delivery pipe were considerably smaller than that of the valve, such effect would be likely to be produced upon a thin tube.

Cross-int. 94. Was not this the case with the instruments made by or for you and your brother, before he went to California?

Ans. It was; and for the reason that I have stated.

Cross-int. 95. Can you swear, of your own knowledge, the time when your brother "took hold of the instruments," after his return from California?

Ans. I believe in the early part of 1856 or the latter part of 1855.

Cross-int. 96. How do you fix this date?

Ans. From remembering the date of his return from Cali-
139 fornia and knowing that he was engaged for several months—less than a year I should say—in other business, which he relinquished to take up the syringe.

Cross-int. 97. (De bene esse.) How do you know what your brother did while he was in California?

Ans. By letters from him.

Cross-int. 98. Describe minutely the construction of the valves which you say, in answer to the sixty-second interrogatory, were "very apt to get out of order, requiring frequent attendance to them."

Ans. In regard to the double-necked syringe, I can't recall distinctly the structure of the valve, but think it was the same as in the first syringe made. The space for the passage of the fluid was not sufficiently large. I can't recall what the occasion of their getting out of order was, but I know we had trouble in using it. This refers to both syringes.

Cross-int. 99. In answer to sixty third interrogatory you say the effect of the improvements your brother made was "to improve the efficiency of the instrument." It was completed so as to answer well for practical purposes before that, was it not?

Ans. I think not.

Cross-int. 100. When can you swear that your brother introduced the double-necked rubber syringe into the market?

Ans. I can't swear when he did it.

Cross-int. 101. When can you swear that either he or you first in-

troduced a syringe having an elastic bulb or sac, and two flexible tubes, with suitable valves, into the market?

Ans. I cannot swear that I ever introduced it into the market. I have replied to the latter part of the interrogatory, that I cannot swear when he did so.

Cross-int. 102. In answer to sixty-fifth interrogatory you say "after his return from California, and his attention was called again to the instrument." What called his attention to it?

Ans. I called his attention to it.

Cross-int. 103. When and where?

Ans. I believe, in Gloucester; immediately after his return from California.

Cross-int. 104. You say in answer to the same interrogatory
140 "he felt sanguine that he could make a profitable thing of the business." Had he not always felt sanguine that it would be a profitable thing?

Ans. I believe that he had.

Cross-int. 105. Why then did he leave it to go to California?

Ans. He was persuaded to go there by the representations of a friend who lived there.

Cross-int. 106. Did you remonstrate with him for proposing to go to California and abandon the syringe enterprise?

(Objected to, it having appeared not that that enterprise was abandoned but the contrary.)

Ans. I do not remember. My impression is that I did.

Cross-int. 107. What was your financial condition in '52, '53, '54 and '55?

Ans. I was considerably in debt, I am sorry to say.

Cross-int. 108. What, to the best of your knowledge, was your practice or income worth to you during each of those years?

Ans. Hardly sufficient to enable me to live in the style in which I was then living, and to pay interest on notes that I was then owing.

Cross-int. 109. What was the style in which you were then living?

Ans. A style of respectability, such as most men in my profession would think proper to live in.

Cross-int. 110. Did you own the house you lived in?

Ans. I did not.

Cross-int. 111. What rent did you pay during these years?

Ans. I paid no rent; I was living with my mother, who owned the house.

Cross-int. 112. Did your financial condition change for the better at any time before March, 1857?

Ans. It did.

Cross-int. 113. Is it a fact that your income in '55 was hardly sufficient to enable you to live in the style in which you were then living, and pay interest on notes that you were then owing?

Ans. To the best of my recollection, yes.

Cross-int. 114. What property did you own in '52?

Ans. I think nothing more than my personal effects—my clothes, library, medicines, horse and buggy.

Cross-int. 115. What property did you own in '55? State fully.

141 Ans. Very little more than I owned in '52, if any.

Cross-int. 116. What in '56?

Ans I can't recall.

Cross-int. 117. How, then, are you able to say that your financial condition improved before March, '57?

Ans. I think that I was released from an indebtedness about that time.

Cross-int. 118. About what time?

Ans. '56 or '57.

Adjourned to 2 o'clock.

Resumed.

Cross-int. 119. When were the petition and specifications for the original patent prepared and sent to the Patent Office?

Ans. In 1856 or 1857.

Cross-int. 120. Can you not fix the date more definitely than '56 or '57?

Ans. It was in '56 that the application was made.

Cross-int. 121. Why did you not apply earlier?

Ans. I cannot tell—probably because the instrument had not been sufficiently perfected.

Cross-int. 122. Did your pecuniary condition have anything to do with the delay?

Ans. It may. I can't tell.

Cross-int. 123. Had you not seen the barrel or English syringe, the Galante syringe, the Mattson syringe, before you filed your petition and specification for the original patent? or some, and which of them?

Ans. I had seen the barrel syringe; neither of the others, that I recollect.

Cross-int. 124. Please to name all the different kinds of rubber syringes which you had seen, or had knowledge of, prior to the filing of the caveat.

(Objected to.)

Ans. I had seen a syringe consisting of a rubber sac, with an ivory or horn tube attached; the instrument constructed by my brother for my sister's use, and Higginson's barrel syringe, like Exhibit D.

Cross-int. 125. Are those all such syringes as you had seen prior to that time?

142 Ans. I can now recall no other, except the model of the syringe that I made, and before described.

Cross-int. 126. Please to name and describe all the rubber syringes which you had seen or had knowledge of up to the time of the filing the petition and specification for the original patent.

Ans. Besides those already mentioned, I had seen, I think, but one, and am not confident of seeing even that, before the filing of the petition; and I think that was Mattson's syringe. Of that I am not confident whether I saw it before or after my application?

Cross-int. 127. Describe that instrument minutely.

Ans. That is more than I can do, to describe it minutely. I think it had a metallic tube proceeding from a bulb, from which proceeded, at right angles to the metallic tube, a flexible pipe. I think it had valves for induction through the straight metallic tube and ejection through the rubber pipe.

Cross-int. 128. What was the character of the bulb?

Ans. I believe it was of vulcanized rubber.

Cross-int. 129. Had you ever, prior to the filing of the caveat, seen a pipe like that marked "C," in figure 2 in "Compl'ts Exhibit, No. 3"?

Ans. I cannot remember that I ever had—not precisely like it; I had seen similar ones.

Cross-int. 130. Of what material was the one you first saw, made?

Ans. I think that I saw one of porcelain in connection with the syringe like Exhibit D. It was, I think, provided with a cork at the opening at one end, to be applied to the anal pipe.

Cross-int. 131. Look at the pipe of "Def'dts Exhibit A," and state whether the one you saw in connection with the syringe like Exhibit D was substantially like it.

Ans. I think it was substantially like it.

Cross-int. 132. Did you see that pipe at the same time you first saw the syringe like Exhibit D?

Ans. My impression is that I did; I am not sure.

Cross-int. 133. Did you or your brother ever make or have made for you a syringe with a pipe like Def't Exhibit A?

Ans. I think not, unless it is this represented on "Compl'ts Ex. No. 3."

Cross-int. 134. Can you swear that an instrument was ever
143 made by or for you or your brother before the filing of the caveat, having a pipe like C, in figure "2," "Compl'ts Exhibit No. 3."?

Ans. I cannot remember; I think not.

Cross-int. 135. Did not your brother inform you, directly or indirectly, that he had seen some of the syringes mentioned in cross-interrogatory one hundered and twenty-third before the filing of the caveat?

Ans. I do not remember that he did.

Cross-int. 136. Did not your brother inform you, directly or indirectly that he had seen some of the syringes referred to in the last interrogatory before filing the application for the original patent?

Ans. I do not remember that he did inform me.

Cross-int. 137. Will you swear that he did not, prior to the filing of the application for the original patent?

Ans. No.

Cross-int. 138. Did you, before the filing of the caveat, mention to your brother the fact of your having seen a syringe like Exhibit D?

Ans. I did.

Cross-int. 139. State the conversation you had with him at the time you so told him.

Ans. I cannot; whatever conversation occurred was in the fall of 1852, and I cannot remember it.

Cross-int. 140. How are you able to state so fully the conversation with your brother in August, '52, about syringes, and not be able to state the conversation occurring in the fall of '52, upon the subject of syringes?

Ans. I presume because the conversation that occurred in August was more forcibly impressed upon my mind.

Cross-int. 141. Were you consulted and advised with in regard to the re-issue of the patent marked "Compl'ts Exhibit No. 2"?

Ans. I have no distinct recollection of any special conference on the subject.

Cross-int. 142. Have you ever made syringes in whole or in part? and if yea, to what extent?

Ans. I have not.

Cross-int. 143. When did you and your brother, or either, first sell your syringes?

144 Ans. My brother, I think, sold them in 1856.

Cross-int. 144. Who made the rubber work for the syringes first sold by your brother?

Ans. I do not remember.

Cross-int. 145. Who made the metal work for those instruments?

Ans. I do not know.

Cross-int. 146. Who made the metal work for the first syringes that you and your brother, or either, made or caused to be made?

Ans. The first moulds for the rubber part were made at my brother's machine shop in Charlestown. I do not know who made the other metal work.

Cross-int. 147. Were the pipes or mountings of the first syringes made by you or your brother of metal?

Ans. They were.

Cross-int. 148. In your application for the original patent, was the claim first made broader in any particular than that granted in the original patent?

Ans. My impression is that it was.

Cross-int. 149. State in what particular it was broader in the application than in the patent granted.

(Objected to.)

Ans. It was made to cover a syringe constructed of a rubber sac with two flexible tubes proceeding from it, so far as I can recollect.

Cross-int. 150. Was this claim denied? and if so, why?

Ans. I think that it was; for what cause I cannot recall.

Cross-int. 151. Do you consider Exhibit D an infringement upon the re-issue patent?

(Objected to.)

Ans. I have not examined the re-issue patent.

Cross-int. 152. Do you not know the claim in the re-issue patent?

Ans. I suppose it to be for the syringe that was patented by my brother.

Cross-int. 153. Have you never read the re-issue patent, or a copy thereof?

Ans. I can't remember that I have ever seen it or a copy of it.

Cross-int. 154. Then you were not consulted in regard to the reissue of the patent, were you?

Ans. I think not.

145 Cross-int. 155. Have you the letters which J. F. Leech wrote you in the correspondence mentioned in interrogatory sixty-seven?

Ans. I have some of them.

Cross-int. 156. Will you produce them that they may be examined by the defendants?

(Objected to unless the letters are produced as exhibits in the case.)

Ans. I have no objection to doing so.

Cross-int. 157. Is J. F. Leech now living?

Ans. I don't know. I've not seen him for several years.

Cross-int. 158. Where in Boston was his place of business when you entered into the agreement mentioned in answer to sixty-seventh interrogatory?

Ans. I think in Washington street.

Cross-int. 159. Did he he make any syringes under that agreement? and if yea, how many?

Ans. I think not.

Cross-int. 160. Is Dr. Joseph Reynolds, of Concord, now living? and if yea, where?

Ans. I believe he is, in Concord, Mass.

Cross-int. 161. How many rubber syringes, in all, had you seen before making your original application for a patent, having an elastic bulb or sac and two flexible tubes?

Ans. Three; the following: syringe like exhibit D; syringe made for the use of my sister; syringe for which application for patent was made. One like exhibit D, one like the first one made for my sister, and a number like that for which the petition for patent was made. I couldn't say how many of these.

Cross-int. 162. About how many, to the best of your recollection?

Ans. I should say perhaps a dozen. I can't recall the number.

Cross-int. 163. Did you, in 1852 or 1853, have a conversation with William H. Phelps, Dr. J. W. Phelps, Dr. H. F. Johnson, all of Boston, or either of them, in regard to syringes?

Ans. No.

Cross-int. 164. Had you not, prior to your application for the original patent in '56, seen an instrument like, or substantially like, Exhibits "G" and "J," or either of them?

146 Ans. I think not. I can't remember that I had, excepting those that my brother made.

Cross-int. 165. Can you swear that you had not seen syringes like Exhibits "G" and "J," or either of them, before that time?

Ans. I cannot swear.

Cross-int. 166. Look at exhibit "I," and state whether, prior to '57, you ever saw an instrument like it? and if yea, when and where for the first time.

Ans. I can say that I've seen an instrument like it; but can't state the time, whether five years ago or ten years ago.

Direct examination resumed.

By Causten Browne, esq., counsel for complainant:

Int. 76. Please look at the syringe now shown you, marked "Complt's Exhibit No. 17," and state how nearly that represents the syringe which your sister had been using before the conference between yourself and your brother in August, 1852, at Gloucester, of which you testified.

Ans. It resembles it in the size of the sac. The sac of the instrument that my sister used was of more spherical form. It was provided with an outlet of horn or bone, I think, into which was screwed a vaginal pipe. The arrangement of the ball and outlet pipe were the same as that substantially.

Int. 77. You stated, upon your cross-examination, that you did, after your conference with your brother in August, '52, see a rubber syringe like exhibit D, in Boston, at the office of Dr. Calvin Ellis, and in his possession. Please state how you came to hear of that syringe, and what you did after hearing of it, giving the circumstances pretty fully.

Ans. I had exhibited the model that I first made of a rubber syringe, with two tubes extending from opposite sides of the bulb, to Dr. Charles Hildreth, of Gloucester. Several days after I had exhibited it to him he came to my office and told me that he had been in Boston, where a friend had shown him a curious syringe that he had brought from abroad, whence he had recently returned, and wished me when I went to the city to call upon him and examine it.

147 He gave me his address; it was that of Calvin Ellis. When I went to Boston I called upon Dr. Ellis, and told him that I had come, by request of his friend Dr. Hildreth, of Gloucester, to see a new form of syringe that he had recently brought from abroad. He showed me the instrument. Exhibit D precisely represents that instrument.

(All parts of the answer relating conversations between witness and other parties objected to.)

Int. 78. When the piece marked "Exhibit No. 12" had been found among your brother's effects, and passed out of your possession, who took it?

Ans. Hamilton D. Lockwood, of Charlestown.

Int. 79. You say, in answer to eighty-second cross-interrogatory, that the first rubber syringe, consisting of a rubber oval sac, with two rubber tubes extending from the ends of its longer axis, was made, as near as you can recollect, in the latter part of January or February, 1853. Do you mean that it was commenced then, or that it was completed then?

Ans. That the first instrument was completed then.

Int. 80. Do you know how long before its completion the work on that instrument was commenced in your brother's shop in Charlestown.

Ans. In November, I think.

Int. 81. Did you see or have knowledge of the other syringes of like construction mentioned by you as made by your brother before he went to California, before they were completed?

Ans. I think I did; I cannot remember.

Int. 82. Might there or not have been experimental work done in his shop in 1852 and '53, not resulting in complete syringes, of which experimental work you had no information?

(Objected to as leading and incompetent.)

Ans. Yes; my brother was working in his shop in Charlestown. I was attending to the practice of my profession in Gloucester.

Int. 83. I notice in your brother's account book, marked "Exhibit No. 14," the following entry, under date November 16th, 1852: "H. E. Davidson, Dr., to two days work on syringe, $6.00." "To copper bed-pan, $6.00"; which syringe was that, the single-necked syringe, or the first double-necked syringe?

(Objected to.)

148 Ans. It must have been the double-necked sy ringe, as my sister had in use the single necked syringe, and had had it some time.

Int. 84. You have spoken of a tendency in the earlier double-necked syringes of your brother's make to a bulging out of the injection rubber tube by reason of the insufficiency of the orifice to discharge the enema as fast as it was forced through the valve; were the rubber syringes of your brother's make, which your sister used in her sickness, also subject to this difficulty?

Ans. I can't remember whether in the instrument my sister used this puffing out took place or not; but undoubtedly it would have resulted in many of the instruments which were made, because of the shammy nature of the rubber work, the tubing being of unequal thickness.

Int. 85. Notwithstanding the several objections experienced in the working of the syringes your sister had in use of your brother's make, how did they compare as a useful and convenient enema syringe with any previous rubber syringe that you were acquainted with?

(Objected to.)

Ans. They were far superior to anything with which I was acquainted.

Int. 86. You say that after your brother's return from California you called his attention again to the syringe. State, if you can, and as nearly as you can, what representations, suggestions or requests, if any, you made to him upon the subject.

(Objected to, witness having already stated the full conversation between himself and his brother on that subject as far as he was able to remember.)

Ans. It was in February, I think, '55, soon after my brother's return that I suggested to him to take hold of the syringe again. His circumstances were quite needy; he required some immediate employment to support himself and family. He expressed a willingness and desire to go into the business, but the proffer of a friend to give

him immediately remunerative employment in other business induced him to except that offer.

(Answer objected to as irresponsive.)

Int. 87. What is the use of such a pipe as the larger one shown in a separate figure in the drawing annexed to the caveat?

Ans. To introduce injections into the vagina.

149 Int. 88. About how long was the India rubber tube which rested in the interior of the specie jar in the syringe apparatus first made by your brother for your sister's use?

Ans. I should say between sixteen and twenty inches, so far as I can remember.

Int. 89. In answer to ninety-ninth cross-interrogatory you say that your brother's syringes were not completed so as to answer well for practical purposes before he went to California. Explain your meaning.

Ans. The difficulty in the valves, and the construction and material. I meant to say that the rubber we obtained from the Union Rubber Company was not of such quality as to enable us to make good, efficient syringes—marketable instruments. (Answer being read to witness, he says,) that is wrong; my meaning was the construction of the material—of the rubber—in the first phrase used by me in this answer.

Int. 90. Did not the two syringes of your brother's make, which your sister used in her illness, answer well for practical purposes in her case?

(Objected to as leading.)

Re-cross-examination.

By A. F. Badger, esq.:

Cross-int. 167. How do you know that work on the first double-necked syringe was begun in November?

Ans. My impression is that it was begun in November from the fact that he commenced upon it soon after having finished the first syringe for my sister's use.

Cross-int. 168. Do you know otherwise than appears on the books "Exhibit 14," the time when work was done on syringes, or the kind of syringes upon which the work was performed? and, if so, how?

Ans. I know that the first syringe that my sister used was completed before he commenced work upon the other syringe. That was before November. My sister received the first instrument in October. The bed-pan to use with that syringe on or before Thanksgiving; my brother and his wife visited us on that Thanksgiving, and he then told me that he had commenced work on it.

Cross-int. 169. Have you any interest, directly or indiretly, in the patent on which this suit is founded?

Ans. Not the least.

HERMAN E. DAVIDSON.

Adjourned to May 2d, at 12 m.

150 *Deposition of T. D. Clough, taken, subscribed, and sworn to before N. A. Parks, Ex'r, May 3d,* 1866.

Int. 1. What is your name, age, residence, and occupation?

Ans. Thomas D. Clough; age, 39; reside in Charlestown, Mass.; and am at work in a machine shop.

Int. 2. Did you ever work for Charles H. Davidson, of Charlestown? If so, when did you go into his employment, and when did you leave it?

Ans. Yes. I went to work for him in March, 1852, and left him in the spring of 1853.

Int. 3. While you were at work with him, did you do any work about syringes of any kind?

Ans. Yes, sir.

Int. 4. What was the first work about syringes that you did while you were in his employ?

Ans. It was to help make the moulds and melt the mettle.

Int. 5. What sort of moulds? Describe them.

Ans. Our first moulds were cast iron, and then we made some of four kinds of metal. The rubber the syringes was to be cast in them.

Int. 6. What was the shape of these moulds?

Ans. They

were in this shape.

Int. 7. State, as nearly as you can, when you first began work on such moulds for Mr. Davidson.

Ans. I think it was late in the fall of '52.

Int. 8. You say you made some moulds of four kinds of metal; do you mean four kinds mixed?

Ans. Yes, sir.

Int. 9. What kinds of metal were those four?

Ans. Tin, lead, antimony, and zinc.

Int. 10. In making the syringes, were antimony and tin used for any other purpose than to mix for making these moulds?

(Objected to, the witness not having testified that any syringes were made.)

151 Ans. No, sir.

Int. 11. Did you ever, while you were in Mr. Davidson's shop, see an instrument like "complt's Exhibit No. 13?"

Ans. Yes, sir.

Int. 12. Was it before or after you began to work on the moulds you have mentioned?

Ans. It was just before.

Int. 13. You say you made a cast iron mould of the shape you have drawn before you began to make the four metal moulds. Can you say about how long before?

Ans. Well, we kept right on from that to build a thing that formed this, (Complt's Exhibit 9.) It was made of iron and steel. The bulb part was iron and the pipe part was steel.

Int. 14. Do you mean that you first made a mould all of cast iron, and next a mould having the bulb part of iron and the pipe part of steel?

(Objected to.)

Ans. Yes, sir.

Int. 15. And after that made the four-metal mould?

(Objected to.)

Ans. Yes, sir.

Int. 16. How many of the four-metal moulds did you make at first when you commenced on that kind?

Ans. I think two.

Int. 17. About how long was it, if you remember, from the time those two four-metal moulds were made until you made more of that kind?

Ans. I should think it was a month.

Int. 18. What other work, if any, did you do, or see any other person do, in relation to the syringe, at the time you were making these moulds?

Ans. They was getting out the metal pipes.

Int. 19. What was done with the moulds which you made or helped to make?

Ans. They was boxed and sent to New York to get the rubber.

Int. 20. Did you see the rubber which was sent from New York?

(Objected to.)

Ans. Well, sir, those first moulds that we made there was so much tin and lead in that the moulds melted; they was too soft, and melted in the furnace.

152 Int. 21. Did you see any rubber bag and tubing corresponding with any of the moulds which you made, or helped to make?

Ans. Yes, sir. It came back bad; it was of no account. The moulds, too.

Int. 22. What was the difficulty with the rubber which came back?

Ans. The moulds melted, and the rubber didn't come good.

Int. 23. How was it with the four-metal moulds which you made after the first two?

Ans. We took out more tin and more lead, and added zinc and antimony to make the metal harder.

Int. 24. How did the rubber come back that was made by those moulds?

Ans. It came out good, except the ridge on the rubber; that was the only objection. Mr. Davidson wanted to get rid of that.

Int. 25. By the ridge do you mean the burr which extends along the rubber tube of "Exhibit 19" on opposite sides?

Ans. Yes, sir.

Cross-examination.

Cross-int. 1. Where are you now employed, and in what business?

Ans. By Cook, Rynds & Co., Charlestown; in their machine shop.

Cross-int. 2. Did you make any note of working or syringes at the time you were in Davidson's employ?

Ans. No, sir.

Cross-int. 2½. When first, after leaving his employ, was your attention called to the subject, and by whom?

Ans. I should think about seven or eight months ago; I can't tell the time; by Mr. Lockwood.

Cross-int. 3. State what conversation you had with Mr. Lockwood upon the subject.

Ans. He came to the shop one day and asked me if I remembered about the syringes that his uncle made, and what they was made of, and when they was made? I told him that I couldn't tell him then, but that I had a book at home that I could refer to. He went on to say something about his expecting trouble. I can't tell exactly what; but he said he would see me again. I invited him down to the house, and showed him my book.

153 Cross-int. 4. Is there any memorandum in that book by which you are enabled to fix the date of your first work on syringes? and if yea, what is it?

Ans. I can tell you when I first went to work for Mr. Davidson; the 1st of March, 1852. I've nothing in the book; but I find it between March, 1852, and the spring of '53. I can't give the date by that book of my first work on syringes.

Cross-int. 5. What is the memorandum in the book by which you fixed the date of your commencing work for Mr. Davidson? Please to read it.

Ans. Here it is: We had a little boy, Francis David Clough, born June 3d, 1852; he died (after I left Mr. Davidson, after he went to California) August 22d, 1853.

Cross-int. 6. Do you fix the date of your commencing work for Davidson by these memoranda? and if yea, how?

Ans. I know that I went to work for Mr. Davidson the 1st of March, 1852. I've nothing in the book to show it. I went to work for Mr. Davidson the March before my child was born.

Cross-int. 7. How do you know that you begun work on moulds in the fall of '52?

Ans. I go by this book; that tells me as nigh as I can tell. That fall we was at work on 'em.

Cross-int. 8. How early in the fall did you begin to work on them?

Ans. I can't tell the month nor the day. I should think in November.

Cross-int. 9. Can you swear that you did any work on moulds for syringes before December 1st, 1852?

Ans. I shouldn't want to swear it, but I'm sure that I worked on 'em in the fall; but I couldn't tell the dates.

Cross-int. 10. Fix the date when you first saw a rubber syringe cast in the mould substantially like "Exhibit 19."

Ans. I can't do it.

Cross-int. 11. How do you fix the length of time elapsing between the making of the first two four-metal moulds spoken of and the making of others of the same sort?

Ans. These moulds had to go to New York, and then they came back and were found bad. It takes some time for them to
154 go there, and some time to come back, and it took some time for Mr. Davidson to look at these things, see what the matter was—think it over. He was a man that always looked into things before he went ahead.

Cross-int. 12. Didn't it take longer than a month to do all this?

Ans. I said it took a month.

Cross-int. 13. Didn't it take longer than a month?

Ans. I've said two or three times that it took about a month.

Cross-int. 14. Will you swear that you made the second lot of four-metal moulds in a month after the first were completed?

A. No, sir.

Cross-int. 15. Will you swear that you made them within two months?

Ans. No, I won't swear to anything of the kind.

Cross-int. 16. How long after you began working on the moulds did you see at the shop a syringe completed so that it would work?

Ans. I should think it was within three months.

Cross-int. 17. Can you swear that you saw one so completed within three months.

Ans. No.

Cross-int. 18. Can you within four months?

Ans. No.

Cross-int. 19. Can you within six months?

Ans. Yes.

Cross-int. 20. Did the first syringe you saw so made work well?

Ans. It worked; but there was improvements made on them soon after. I can't give the time nor the dates.

Cross-int. 21. What were those improvements?

Ans. I can't tell you.

Cross-int. 22. Describe how the first one you saw worked.

Ans. Well, the first one I saw—the one with the bottle—isn't here now. This one, "Exhibit 19," you squeezed the bag; that's all I know about it.

Cross-int. 23. Did the first one you saw have valves?

Ans. Yes, sir.

Cross-int. 24. Of what material were they made, and how attached to the instrument?

155 Ans. They was all put on just the same as those in "compt. Exhibit 7"—shoved into the rubber.

Cross-int. 25. You say in answer to twenty-second interrogatory, "the moulds melted and the rubber did not come good." At what time did the rubber first come good?

Ans. I've answered that—about the same as answered it. After we sent our second batch of moulds to New York they was good, and the rubber come good.

Cross-int. 26. How many syringes were completed in the shop while you worked for Mr. Davidson?

Ans. Mr. Davidson had a little room in one corner of the shop; us hands didn't have the privilege of going in there to see what he had or didn't have. He would bring out a few parts of those things, put 'em together and carry 'em back there. I don't know how many was made there.

Cross-int. 27. How many men were employed by Mr. Davidson while you worked for him?

Ans. I can't think of but seven now, with myself.

Cross-int. 28. Who owned the machinery and tools?

Ans. Mr. Davidson.

Cross-int. 29. Did he own the shop?

Ans. No, sir.

Direct examination resumed.

Int. 26. Did Mr. Davidson, before he went to California, sell out his machinery and tools? If so, to whom and about when?

Ans. He sold out to Norton & Leman, in the spring of '53; I think in May, but won't be sure.

Int. 27. What use was made, if any, of the cast-iron mould and the iron and steel mould which you say you worked on before you began on the four-metal mould?

Ans. They were used as patterns of the syringes as cores.

Cross-examination resumed.

Cross-int. 30. Please name the men who worked for Mr. Davidson while you were in his employ.

156 Ans. Flanders, Asa Pattee, Smith, Elliot Miller, Joseph Sidwell, Fuller, and myself.

Cross-int. 31. Do you know where any of these men are? If so, please to state where.

Ans. Flanders belongs in Portsmouth; where he is I don't know. Pattee is dead. Smith's place is Portsmouth; I guess he's there. Miller is dead. Sidwell I don't know where he is; I ain't seen him for a number of years now. Fuller is to work in Boston; lives in Charlestown, I think, but I don't know where.

T. D. CLOUGH.

Deposition of Francis C. Cross, taken, subscribed, and sworn to before N. Austin Parks, examiner, April 25th, 1866.—Direct examination.

By Causten Browne, esq., counsel for complainant:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Francis C. Cross is my name; age, 39 years; residence, Brooklyn, New York; occupation, I have none at present. I have been sick.

Int. 2. Have you recently been to Europe in behalf of the complainant, Mr. Lockwood, for the purpose of investigating the matters of fact in relation to which the depositions of certain witnesses in Paris have been taken?

Ans. I have.

Int. 3. In those investigations did you undertake to find or procure an interview with Mr. Grossman, now or formerly of the firm ef Grossman & Wagner, of Paris, one of the persons mentioned in the commission under which said depositions were taken?

Ans. I did.

Int. 4. Please to state what efforts you made for that purpose, and with what result.

Ans. I called upon Mr. Wagner. He informed me that Mr. Grossman had been absent from Paris over five years, and that he had lived in Frankfort-on-Main a greater portion of that time. I wrote, and caused to be written, some nine letters for the purpose of ascertaining the whereabouts of said Grossman. The letters were
157 written to Frankfort, and the only information that I could obtain was that Mr. Grossman was seen during the last six months at the springs in Germany. The party stating this could not tell me the name of the springe. I had a number of interviews with Mr. Wagner, in all of whlch he stated that Mr. Grossman was an invalid, and if it were possible to find him, he did not think he could be induced to come to Paris.

(All that part of the answer referring to the conversation of Wagner objected to.)

Cross-examination waived for the present.

F. C. CROSS.

Deposition of L. H. Hayward, taken, subscribed and sworn to, before N. Austin Parks, examiner, April 25th, 1866.—Direct examination.

By Causten Browne, esq., counsel for complainant:

Int. 1. State your name, age, residence and occupation.

Ans. L. H. Hayward; age forty, residence Charlestown; occupation coppersmith.

Int. 2. Look at the article labelled "Complainant's Exhibit No. 8, N. A. P., ex'r," and state, if you know, who made it.

Ans. I made it.

Int. 3. For whom?

Ans. For Mr. Charles Davidson, of Charlestown.

Int. 4. Have you a book entry of your own made at the time showing this work? Please read the entry.

Ans. "November 13, 1852. Chas. Davidson, Dr., For one copper bed-pan, $6 00."

Int. 5. Was this article completed at that date, November 13th, 1852?

Ans. I should say it was delivered at that date; of course it was completed.

Int. 6. State, as nearly as you can, how long before the delivery of the article you received Mr. Davidson's order for making it.

Ans. The time is uncertain. It might have been two weeks;
158 it might have been three or four. I was doing locomotive repairs, and they were coming in at any time, and I had to leave everything for them; they had precedence: and by referring to the books, I should think that for two weeks previous I couldn't have touched the thing. I might have had the order a month, and might not more than three weeks. I had never seen such a thing before. Mr. Davidson explained to me what he wanted and why he wanted it.

Int. 7. State, as nearly as you can, what explanations Mr. Davidson gave you upon the subject.

Ans. Well, he came frequently to the shop and spoke to me of having a sick friend, and he wanted an apparatus to use in the bed for receiving passages, etc., for the patient, and marked out on paper something similar to this and wanted it made.

Int. 8. Did he say anything that you remember, and what, in regard to the use of the article as part of an injection apparatus?

(Objected to as leading.)

Ans. I remember nothing that he said relative to that.

(Counsel for respondent declines to cross-examine.)

L. H. HAYWARD.

Deposition of Joseph Cheever, taken, subscribed and sworn to before N. Austin Parks, examiner, May 2d, 1866.—Direct examinntion.

By Causten Browne, esq., counsel for complainant:

Int. 1. State your name, age, residence and occupation.

Ans. Joseph Cheever; 57; Charlestown; physician.

Int. 2. Did you ever have your place of business in No. 1, Tremont Temple, city of Boston?

Ans. I did.

Int. 3. Did you have more than one room? If so, describe the premises you occupied.

Ans. There was the front store of oblong shape and an office in the rear of the store—the partition between the office and store two-third the way to the ceiling. At the side of the office was a little separate, narrow room, as it were; but it was simply a passage way rounding in towards the stairs.

159 Int. 4. What did you have for sale in the front store?

Ans. A general assortment of medicines and surgical instruments, or orthopedic instruments, for diseases and malformations.

Int. 5. When did you take possession of those premises?

Ans. The first day of February, '53.

Int. 6. Have you now the lease which you took of those premises? If yea, will you produce it?

Ans. I have, and produce it. It is marked "Complt's Exhibit No. 18, N. A. P., exr."

(Production of this lease objected to.)

Int. 7. Do you know Dr. Henry F. Johnson, now of Southboro, Mass?

Ans. I do; I am well acquainted with him.

Int. 8. Were you acquainted with him during the time you occupied the premises No. 1, Tremont Temple?

Ans. I was.

Int. 9. Was he accustomed to visit you there, from time to time, while you so occupied?

Ans. I can't bring to mind any special visits until he came in to make arrangments to have a privilege in the office, which was soon after I went in.

Int. 10. What was the condition of the premises in the Tremont Temple, as to readiness for occupation, when you first took possession?

Ans. No part was suitable to occupy, except No. 1. All the rest was chaos and confusion, both inside and out.

Int. 11. Had the Tremont Temple been, previously to your going in, destroyed by fire?

Ans. Yes, sir—the old Temple.

Int. 12. Who was the first tenant that occupied the premises after it was rebuilt?

Ans. I was the first one.

Cross-examination.

By A. F. Badger, esq., of counsel for defendant:

Cross-int. 1. Where was the office you occupied next preceding No. 1, Tremont Temple?

Ans. In Bromfield street, under the meeting-house.

Cross-int. 2. Where was your office during the year 1852?

Ans. Under the Methodist meeting-house in Bromfield
160 street, commencing the forepart of April after the conflagration of the old temple. The first three months of '52, it was in the old temple.

Cross-int. 3. Can you give the exact date of your leaving the old temple?

Ans. Yes, sir; it was last night in March, previous to the 31st. I went out and turned the key upon it that night, and it was consumed after I left, and everything I left destroyed that night.

Cross. int. 4. Did you occupy two rooms in the old temple?

Ans. Not exactly two rooms—there was a little corner, parted off with a curtain, that I used for an office.

Cross-int. 5. Did you keep a general assortment of surgical instruments in the old temple?

Ans. I did not in the old temple. The principal, besides my medicines, were trusses, supporters, braces, etc.

Cross-int. 6. When first, and where, if at all, did you see a syringe having an elastic bulb or sac, two flexible tubes with suitable valves for receiving and ejecting enema?

(Objected to.)

Ans. The first I ever recollect of seeing was brought in by Dr. Mattson. It was after I had been in my store some time, in Tremont Temple.

Direct examination resumed.

By Causten Browne, esq.:

Int. 13. Do you mean that it was after you took possession in Tremont Temple in the second time—in 1853?

Ans. It was; somewhere from one to two years after.

JOSEPH CHEEVER.

Deposition of Jacob Sleeper, taken, subscribed and sworn to before N. Austin Parks, examiner, May 3d, 1866.—Direct examination.

By Causten Browne, esq., counsel for complainant:

Int. 1. State your name, residence and occupation.

Ans. Jacob Sleeper; residence Boston; occupation merchant.

Int. 2. Were you, in the years 1852 and 1853, treasurer of the Methodist Religious Society in Bromfield street, Boston?

161 Ans. That was not the corporate name of the society. The corporate name was "The Trustees of the Methodist Religious Society in Boston;" their property was in Bromfield street.

Int. 3. Did their Bromfield-street property comprise premises which were let as offices, etc.?

Ans. Yes, sir; there were two stores in front for business purposes; that is, there were at that time.

Int. 4. Have you your treasurer's books, showing receipts of rent from the occupants of those officer or stores during the years 1852, '3?

Ans. I have.

Int. 5. Were these receipts entered by yourself at the time?

Ans. Yes, sir.

Int. 6. At any time in 1852 and 1853 was Dr. Joseph Cheever an occupant of part of those premises?

Ans. He was.

Int. 7. Will you read from your book above mentioned whatever enteries you find of rent paid by Dr. Cheever?

Ans. The first one I find is "October 5, 1852. Rent of J. Cheever, $170." The next, "Feb. 1, 1853. Rent of J. Cheever, to Feb'y 1st, $120." Those are all the entries I have. The book don't state what time the occupation of Dr. Cheever commenced.

Int. 8. State as nearly as you can, aided by the entries in the book, the time, or about the time, when Dr. Cheever's occupation commenced, and the time when it ceased.

Ans. Assuming that the $120 be from Oct. 1 to Feb'y 1, four months, his entry must have been some time in April. I should say about the 10th of April. I judge that he must have left about the 1st of February, because there was no rent received afterwards from him.

(Counsel for defendants declines to cross-examine.)

JACOB SLEEPER.

162 *Deposition of Jos. K. Hayes, taken, subscribed, and sworn to before N. Austin Parks, examiner, May 7th, 1866.—Direct examination.*

By Causten Browne, esq., counsel for complainant:

Int. 1. State your name, age, residence, and occupation.

Ans. Joseph K. Hayes; age, 52; residence, Boston; occupation, collector of internal revenue.

Int. 2. Did you have charge of the building known as the Tremont Temple, in Tremont street, Boston, before it was burned, and of the new building which was erected in its place?

Ans. I did.

Int. 3. When was the old Tremont Temple burned?

Ans. On the night of March 30th, 1852.

(Cross-examination declined.)

J. K. HAYES.

Deposition of Joseph B. Crosby, taken, subscribed, and sworn to, before N. Austin Parks, examiner, May 7th, 1866.—Direct examination.

By Causten Browne, esq., counsel for complainant:

Int. 1. State your name, age, residence, and occupation.

Ans. Joseph B. Crosby; age, 37; residence, Boston; occupation, solicitor of patents and mechanical engineer.

Int. 2. Did you act as the attorney of Chas. H. and H. E. Davidson, in presenting to and prosecuting before the Patent Office the application of Chas. H. and H. E. Davidson, for the letters patent granted to Chas. H., their assignee, March 31st, 1857, for an improved enema syringe?

Ans. I did in connection with my partner at that time, Matthew H. Merriam. The attorneys of record were Merriam & Crosby.

Int. 3. Is the patent of Pearshall & Gilbert, to which the
163 applicants were then referred as anticipating their invention, on record at the Patent Office, so that a copy can be obtained?

Ans. It was not so on record in April, 1865. It was one of those patents which was destroyed by the fire of '36, with the model and all papers connected with it. I have not learned that it has been restored since that time. I applied for a copy of it then and could not get one.

Int. 4. By letter of April, 1865, the Patent Office refers you for a description of Pearshall & Gilbert's enema syringe, to the Franklin Journal, 2d series, vol. 16, p. 321. I give the reference as the certified copy in evidence gives it. Have you the volume of that work in which that description occurs? If so, will you produce it that a copy of the description may be inserted in this record, and give the volume and the page where you find it?

Ans. I have the volume referred to. It is of the new series, vol. 12, page 321.

Int. 5. Have you caused to be prepared, and will you produce a drawing made according to that description?

Ans. I have prepared such a drawing and produce it, (marked "Compl't's Exhibit No. 22, N. A. P., ex'r.")

Int. 6. So far as the description in the Franklin Journal directs or indicates, what parts of this instrument are of rubber and what parts are of metal?

(Objected to.)

Ans. The ball which is marked A, is of rubber; all the other parts are of metal, specified as pewter in the Franklin Journal.

Int. 7. Will you now state all the facts or circumstances which led you to yield to this reference from the Patent Office, and limit the claim of the applicants as you did limit it in the said original application?

(Objected to as being a matter of record.)

Ans. In preparing the application I was as fully aware of the matter in the Franklin Journal pertaining to the Pearshall & Gilbert case as I am to-day, holding the opinion that the tubes were metallic; and acquainted Mr. Chas. H. Davidson with the Pearshall & Gilbert case. In view of those facts I prepared the claim substantially as it now stands in the re-issue. The reference given me in rejection by the office was a matter of surprise, but I concluded that it might be pertinent, because I thought the office might have more matter to form an opinion on than I had in the Franklin Journal, knowing
164 that many of the records of patents destroyed in the fire of '36 had been restored to the office. It was owing to this idea of mine that the office had some conclusive evidence that Pearshall & Gilbert's tubes were of rubber, and partly from Mr. Chas. H. Davidson's impetuosity and anxiety to obtain a patent, and also to my then inexperience in combating the views of the Patent Office, I, with Mr. Davidson's consent, changed the claim to the one in which the patent was originally issued, paying at that time greater deference to the opinion of the examiners than I perhaps may at present.

Int. 8. So far as you know, did either of the applicants have any knowledge in regard to the Pearshall & Gilbert instrument and patent than what you communicated to them?

Ans. They did not.

(Counsel for defendants declines to cross-examine, with the understanding that if Mr. Giles should wish to do so, this witness shall be recalled for the purpose.)

J. B. CROSBY.

Extract from Franklin Journal. New Series, vol. 12, *page* 321. (*J. B. Crosby.*)

"28. For an improvement in the enema syringe; John Pearshall and David Gilbert, Gettysburg, Adams county, Pennsylvania, May 22.

This syringe is undoubtedly new in its construction, and so far is entitled to a patent. It is made in part of pewter, and in part of a caoutchouc bag; the portion made of pewter is somewhat in the form of a common syringe, but with the body part short, and hav-

ing a tube at each end; on the middle of the body part there is a small opening with a neck, to which the caoutchouc bag is to be attached, which then stands at right angles with the body of the syringe. One of the small tubes is to be passed into the rectum in the usual way, the other is to curve so as to dip into a vessel containing the liquid injection; on the inner end of this latter tube there is a valve opening inwards, towards the body of the syringe, and another valve opens outwards at the inward end of the injecting tube. The caoutchouc bag is to be squeezed together, and then, on allowing it to expand by its own elasticity, it will draw the fluid into itself from the containing vessel, which, on squeezing it, will be injected; this operation is to be repeated whilst it is deemed requisite. The pewter part of the instrument screws together for adjusting the valves and for convenience of package.

Although we believe the contrivance to be new, we do not think it likely to go into general use; the two valves will be troublesome when used with the tenacious kind of fluid frequently employed, and the administration will be much less convenient than with the more common instruments."

Deposition of Hamilton D. Lockwood.—Taken, subscribed, and sworn to before N. Austin Parks, examiner, May 3d, 1866.—Direct examination.

By Causten Browne, esq., counsel for complainant:

Int. 1. Are you the complainant in this cause?

Ans. I am.

Int. 2. Did you receive the piece of metal marked "Exhibit No. 12" from your uncle, Dr. Davidson? If so, when was it, as nearly as you can remember?

Ans. I did; sometime in the winter of '65-6. I can't state the exact date.

Int. 3. In whose possession has it been from that time until produced in evidence in this case?

Ans. It has been in my pocket ever since.

Int. 4. Is it in the same state in which it came into your possession?

Ans. It is, so far as I know. It has been out of my possession for a week or so.

Int. 5. Have you been abroad since 1857? If so, how many times, and where did you go?

Ans. I've been abroad twice; to Great Britain and Ireland; in France, and other places on the continent—I think in 1861 and 1862.

Int. 6. While abroad did you see, and if yea, where, any syringes of the general construction of of Exhibits "G" and "J," but differing in some working part? If yea, please describe what you saw.

(Objected to.)

Ans. While in London and Paris I saw a syringe very much like Exhibits "G" and "J," with the exception that it had no
166 valves. To take the place of the valve a stop-cock was used and also the thumb and finger upon the tubing.

Int. 7. Was the stopcock on that syringe which was to be used with the thumb and finger upon the tubing, or were there two different constructions of syringes, one of which was provided with a stop-cock, and the other was to be used with the pressure of the thumb and finger on the tubing?

(Objected to.)

Ans. There were two different kinds; one to be used with the stop-cock, and the other with the thumb and finger.

Int. 8. Did you find both kinds in London and both kinds in Paris, or one kind in one place and one kind in the other?

(Objected to.)

Ans. I found both kinds in London, and one kind in Paris, that used with the stop-cock.

Int. 9. Did you find them in private hands or exposed for sale?

Ans. Those with the stop-cock were exposed for sale; the other was an old one that I found in an apothecary's shop, or rather, a surgical-instrument shop, in London.

Int. 10. Please explain a little more precisely how the last-named one, viz., the one which had neither valves nor stop-cock, was operated to administer an injection?

Ans. By compressing the bulb with one hand and the tubing with the other—the delivery tube—and allowing the bulb to expand, the fluid would be drawn up into it; then, by pressing the induction tube and compressing the bulb, the fluid would be thrown out through the delivery tube.

(Counsel for defendants declines to cross-examine.)

H. D. LOCKWOOD.

167 *Deposition of Charles E. Prescott, taken, subscribed, and sworn to before N. Austin Parks, examiner, April 27th, 1866.—Direct examination.*

By Causten Browne, esq., counsel for complainant:

Int. 1. State your name, age, residence and occupation.

Ans. Charles Edwin Prescott; age, 36 years; residence, New York; occupation at present, none. I have retired from business.

Int. 2. Were you ever engaged in business in New York with Mr. Frederick Liese, late of that city, now deceased?

Ans. I was.

Int. 3. What was Mr. Liese's business?

Ans. Importer of druggists' sundries and surgical apparatus.

Int. 4. When did you go into the business with him, and how long did you continue?

Ans. In April, '51, and remained with him until about the 1st of May, '61; at that time I raised a company and went to the war, but my interest in the business remained until his death.

Int. 5. What time did he die?

Ans. In December, '62.

Int. 6. Were you connected with him in family? If so, how?

Ans. Yes, I was his son-in-law; I married one of his daughters.

Int. 7. Were you a partner in the concern all the time you were with him?

Ans. I had an interest in the business. The partnership was not in writing; but both my brother-in-law and myself had a share of the profits of the business from the time we went in there. The name was Frederick Liese. By my brother-in-law I mean Mr. Liese's son, now dead.

Int. 8. Please to state, generally, how well acquainted you were, during the time mentioned, with the business of the concern and the nature and merits of the surgical instruments imported by it from time to time.

Ans. I was intimately acquainted with the business, as I had entire charge of the books, conducted the foreign correspond-
168 ence, excepting the German (which language I did not understand,) and gave all the orders; in fact, I knew as much about the business as Mr. Liese himself did.

Int. 9. While you were so connected in business with Mr. Liese did he go to Europe? and, if more than once, how many times? And state as nearly as you can the time of each visit.

Ans. I know that he went in '52 and '53; he didn't go in '54, but went again in '55. He went a number of times between that and '61; but I can't state the exact dates.

(Witness here desires to say that it was in 1852 that he went into business with Mr. Liese; that he fell into the mistake from having gone to New York in '51; and that his marriage took place on the 24th March, '52, and he went into business with him in the following month.)

Int. 10. Please look at syringe marked "D," an exhibit produced by the defendant, being a syringe consisting of a rubber cylinder, with metallic heads, having attached to each a flexible tube, and provided with valves, and state when you first saw such a syringe as that, where you saw it, and, if you know, whence it had come.

(Objected to as giving a description of the instrument and leading.)

Ans. I saw it first somewhere about December, '53; it came from William Matthews, a manufacturer of surgical instruments in London; that is, Matthews sent it to Mr. Liese, it having been purchased by Mr. Liese and sent to Matthews, with other samples, to be shipped with goods purchased of him.

Int. 11. Have you here the invoice book of Frederick Liese, from 1849 to August, 1855; and, if so, will you state whether you find therein the invoice containing this syringe just referred to, like Exhibit D; and on what page of the invoice book it is, and give the date of the invoice, the name of the shipper, the name of the vessel, and the words of the entry which describe the instrument in question?

Ans. I have the book; I find the invoice referred to; the book is not paged as far as this; the invoice is dated "November 15th, 1853; steamer Europa; William Matthews, London, shipper." It is expressed here:

"1 syphon (McIntosh case) '6.'"

Int. 12. Subsequently to this importation did Mr. Liese import from any French house, and if so, from what, any syringes of
169 similar construction to that mentioned in the last answer? If so, will you find, if you have it on the book, the invoice showing such importation, and give the particulars of the invoice as you did in your last answer?

Ans. He did; I have the invoice here in the book. The date of the invoice is "Paris, 16th December, 1854," the name of the shipper, Fabriquettes fils et Morra; the vessel was the Mercury, a sailing vessel. The entry is as follows:

No. 146.	2 doz. clysoirs	40 & 2 p.c.	72	144
371.	2 " "	boule	48	96

Int. 13. Speaking of the first one of this kind of syringe, that which was shipped to your house by Matthews, do you remember to whom that syringe was sold?

Ans. Yes, I do, by finding it on the sales book. I don't remember the transaction, but have referred to the books and found the thing described exactly.

Int. 14. To whom was it sold?

Ans. To Dr. J. W. Phelps, of Boston, now dead. He used to buy all sorts of odds and ends.

Int. 15. After this English syringe, which was shipped by Matthews to your house was received, did you have conversation with Mr. Liese in respect to the syringe? If so, state what was said between you.

(Objected to.)

Ans. Yes; the usual conversation that was always had on new articles. I remember this in particular, because we had a dispute on its merits. Mr. Liese stated that it was a new thing that he had just seen in England, and thought it would supersede the metal syringe. I differed with him, and showed him in what it was lacking.

Int. 16. What practical objection, if any, did you find to the Matthews syringe just mentioned?

(Objected to.)

Ans. The walls of the syringe were not elastic enough to fill it with water after the liquid had been expelled; that is, it takes too long to suck the water up. It would take too long to operate the thing; it would take all day to take an injection—that's amount of it. The construction of this syringe is such that it has not a sufficient elastic power to refill quick enough the syringe with liquid.

170 Int. 17. State whether the persons to whom you sold syr-

inges of this construction afterwards were satisfied or dissatisfied with them, and what they did about them.

(Objected to, witness not having testified to selling any such instruments. Question withdrawn.)

Int. 18. Did your house sell syringes of this construction after the Matthews importation? If so, to what extent and with what success as a matter of business?

Ans. We did sell syringes of that construction some time after, to a limited extent. They were almost invariably complained of for not answering the purposes of an injecting instrument.

Int. 19. Were they all sold? If not, what was done with the balance?

Ans. Well, they may have all been sold. I know that for some years afterwards there was a quantity of them among the rubbish of the store that I've no doubt were returned to us by parties who had purchased them.

Int. 20. Look at syringe "Exhibit G, R. E. S., ex'r," and state whether syringes of that construction were at any time imported by Mr. Frederick Liese. If so, was it before or after the importation from Fabriquettes, fils et Morra, of syringes like "Exhibit E?"

(Objected to as leading.)

Ans. Yes; we did import those syringes from Paris; Mr. Liese bought them of Galante, and they were sent by him to Fabriquettes fils et Morra and shipped to us by them, and then afterwards Fabriquettes bought them on our orders.

Int. 21. State, if you can, in what year the first syringe of this construction came into the possession of your house in New York.

Ans. I can't state the year. It was subsequent to '53; I know that; subsequent to the end of '53; may have been in '54, and may have been not till '55.

Int. 22. Do you understand the meaning of the French descriptions of surgical instruments in the French invoices which you have received during your connection with it?

Ans. I do.

Int. 23. Turn to page forty-three of the invoice book, and
171 state the meaning of the following entry: "Clyso levier a boule;" and state also, if you know, what in fact the instruments there mentioned were.

Ans. Well, clyso levier means a lever syringe, literally; with a bulb or with a ball, is the meaning of "a boule." This instrument referred to was a metallic syringe inserted in a tin reservoir operating with a lever; the bulb stated there was an air chamber of India rubber. The construction of the syringe was, in all respects, like a fire-engine. I can't explain it any better than that. I will annex a sketch which will be mechanically correct; perhaps the form may differ a little from the original. The sketch is marked "Compl't's Exhibit 9, N. A. P., ex'r."

Int. 24. Now turn to page sixty-seven of the invoice book to the following entry: "21 . 3 injecteurs;" what does that mean? What information does that give as to the nature of the instrument?

Ans. It is a tin syringe—a metallic syringe.

Int. 25. Now turn to page eighty-seven. Is the invoice on that page in French or in German?

Ans. It is in German.

Int. 26. Assuming that any four entries on that page are properly translated "1 clysoir new pattern," what information does that give as to the nature of the instrument, and state, if you know, what sort of instruments they were.

(Objected to, it not appearing to be so translated.)

Ans. Well, it means "a syringe"—new pattern. The French call everything "clysoir" that is used for injecting purposes. I wish to say that as no French gum syringes had been received at that time, I suppose these must have been metallic syringes. I say that none had been received, from the fact that it was admitted both by my father-in-law and my brother-in-law that that gum syringe marked "D" was the first entirely gum syringe they had ever seen in their lives. I remember that distinctly. My brother had then just returned from Paris, where he had lived three years.

(Answer from the words "I wish to say" to the end of the answer objected to as irresponsive.)

Ins. 27. What is the meaning of the term "clysodame," used in the last entry on page ninety-seven of the invoice book, and what was the instrument?

Ans. "Clysodame" means "a female injector," literally; a
172 syringe for injecting the vagina of females. The instrument was an India rubber tube, sometimes with a metallic end and sometimes with an ivory end. I will produce a sketch of it. The sketch is marked "Complainant's Exhibit 10, N. A. P., ex'r."

Int. 28. On page 155 of the invoice book is the entry, "½ doz. clysoirs." Can you give any other answer in regard to this than in regard to the previous entries of "1 clysoir," before referred to?

Ans. Yes; I think this means, judging from the rest of the invoice and the price, a peculiar style of syringe, which really is not a syringe. It consisted of a cone-shaped India rubber tube from two to three feet long, the opening at the top about four inches wide, then tapering down to a point, to which was wired an injecting tube with an elbow. It was used by filling with water, closing the large orifice with one hand, and with the right hand drawing down the water.

Int. 29. Now turn to page 162, Nos. 96, 97, 98, 99, referred to by the witness Oelzner as "seringues aux livres assort.' State generally and briefly what those instruments were.

(Objected to.)

Ans. They were glass penis syringes in wooden boxes.

Int. 30. On pages 89 and 200 of the invoice book there are entered "6 clysopoches" and "12 clysopoches," respectively. State what those articles were?

Ans. They were little syringes; that is it, "Exhibit I." That is a clysopoche.

Int. 31. Explain briefly how the bulb marked "Exhibit I," and covered with net, is used in the instrument. For what purpose?

Ans. It is used as an air chamber to continue the jet; what they call a "jet continu" in French. Without that it would be but a single spirt at a time.

Cross-examination.

By A. F. Badger, esq :

Cross-int. 1. What was your business prior to your connection with Mr. Liese's house ?

Ans. I was book-keeper in the commission house.

Cross-int. 2. Did you become interested as a partner, or quasi partner, in the house of Fred'k Liese when you first went there in '52 ?

Ans. It was the understanding when I came there that I should have an interest, but the interest wasn't defined.

173 Cross-int. 3. What duties did you perform at that house in 1852 and '53.

Ans. I was book-keeper and occasionally salesman.

Cross-int. 4. Did you examine personally all the goods brought into the store and kept for sale at that time—1852 and 1853 ?

Ans. I took an especial interest in so doing for the purpose of familiarizing myself with the business; there was nothing came into the store that did not pass under my observation.

Cross-int. 5. Had you, previous to going in with Mr. Liese, any knowledge of that kind of business ?

Ans. I had not.

Cross-int. 6. Had you, at the time of going in with Mr. Liese, any knowledge of his previous business ?

Ans. I had not.

Cross-int. 7. You say in answer to the twentieth interrogatory that Mr. Liese bought them of Galante and sent them to Fabriquettes fils et Morra. Do you know these facts of your own knowledge, or from hearsay ?

Ans. From Mr. Liese's saying, and from the invoices, and knowing that the Fabriquettes buy nothing at all; they only do a commission and forwarding business. I have been in their establishment.

Cross-int. 8. Had you ever seen a rubber syringe with elastic tubes at any time prior to 1853 ?

Ans. I never had.

Cross-int. 9. How long after you saw syringes like "Exhibit E," did you see any like "Exhibits G" or "J" ?

Ans. I can't say how long. This one, "Exhibit J," was considered an improvement on "Exhibit G."

Cross-int. 10. Do you fix the date of your knowledge of such syringes like Exhibits "D," "G," and "J," by the invoice books of Fredk. Liese entirely ?

Ans. I do not.

Cross-int. 11. How do you fix the date of your first knowledge of syringes like Exhibits "D," "G," and "J" ?

Ans. Because Mr. Liese, after his return from Europe, asserted that those India rubber syringes were the first of the kind
174 that he had ever seen. The things were new to me, and this conversation occurred in respect to these things.

Cross-int. 12. When did the conversation occur referred to in your last answer?

Ans. On the arrival of the "McIntosh syringe," on or about December, '53.

Cross-int. 13. Had you ever, previously to that date, seen a syringe or instrument having an elastic bulb or ball and a single injecting tube?

Ans. I had.

Cross-int. 14. When first?

Ans. When I first went into the business, in the spring of '52.

Cross-int. 15. When first did you see a syringe having an elastic bulb or sac and two flexible tubes?

Ans. Some time during 1854.

Cross-int. 16. Had you a knowledge of the French language at the time you entered Liese's store, in '52?

Ans. I had.

Cross-int. 17. To what extent?

Ans. To be able to speak and write the language.

Cross-int. 18. How long after your knowledge of syringes like "Exhibit D" did you see syringes of American manufacture substantially like it?

Ans. I don't know that I ever saw one of American manufacture like it till the present moment, as we never had them in the store.

Cross-int. 19. When first did you see an instrument like "Exhibit I"?

Ans. When I first went in the store, in the spring of '52.

Cross-int. 20. Were there a number of such instruments in the store at that time?

Ans. Only two or three as samples.

Cross-int. 21. Was Mr. Oelzner connected with the house of Fredk. Liese when you came there?

Ans. He was.

175 *Direct examination resumed.*

By Causten Browne, esq:

Int. 32. You say in answer to cross-interrogatory ninth that the syringe like "Exhibit J" was considered an improvement on the syringe like "Exhibit G." Which of the two kinds did you first see?

Ans. The syringe marked "G."

Int. 33. Did the house of Frederick Liese deal at all in American made goods?

Ans. They did.

Int. 34. To what extent as compared with imported goods?

Ans. To a small extent.

Int. 35. You speak in answer to twelfth cross-interrogatory of the arrival of the "McIntosh syringe" on or about December, '53. Do you mean the syringe before referred to, shipped by Matthews?

Ans. I do.

Int. 36. In answer to fifteenth cross-interrogatory you say you first saw a syringe having an elastic bulb or sac and two flexible tubes some time during 1854. Which syringe was that? From what foreign house was it received?

(Objected to, witness not having stated that it was from a foreign house.)

Question amended by striking out the words "from what foreign house was it received?"

Ans. Like the ones marked "G" and "J."

Int. 37. How do you know that it was 1854, and not the year following, if you do know?

Ans. I fix the date by the books.

Int. 38. Where is there any entry in the books showing that that kind of syringe (and not the two dozen syringes with the India rubber cylinders and metallic heads) were imported in 1854? Please reflect, and see if you are right as to the importation in '54, observing that the question does not relate to syringes having rubber cylinders with metal heads like Exhibit "D."

(Objected to.)

Ans. The syringes with the metallic heads were imported in December, '54. These others were imported afterwards. I supposed you had reference to those with two tubes.

176 Int. 39. Do you find any entry in the invoice book showing an importation of syringes having the all rubber sac like Exhibits "G" and "J" with two flexible tubes? If so, will you state the date and give the language of the entry.

Ans. Well, the 20th July, 1855, I find some of the same kind as those which came in December, '54; I know from the number, which is 371. These were probably like Exhibit "J," because in the first lot the wooden ends were made of a species of white wood, which, when wet, would crack open, and the improvement consisted in substituting ebony, which wouldn't crack. The white wood will be found under the brass cap in Exhibit G.

Int. 40. In answer to twelfth direct interrogatory you stated that the invoice book showed an importation from Paris 16th December, '54, of syringes like Exhibit "D," and in answer to the twentieth and twenty-first direct interrogatories you stated that you imported syringes like Exhibit "G," which might have been in '54 and might have been in '55. Do you mean to change this?

(Objected to, language of witness in answer to interrogatory not being accurately quoted.)

Ans. Well, it was in '55, the invoice was dated December 16th, '54, and could'nt have come till '55, because it come by a sailing vessel.

Int. 41. You have said that the importation of clysoir boule of December, 1854, was of syringes like Exhibit "D," having the rubber cylinders with metallic heads. Do you mean to change this?

Ans. No; I say they are like those, "Exhibit G."

Int. 42. Do you only judge from the expression used in the invoice of December, '54, viz, "clysoir boule," that those syringes had oval bulbs like "Exhibit G"?

Ans. I judge from the invoices that they are syringes either with a cylinder or bulb in the centre, and with two flexible tubes.

Int. 43. So far as the entry then shows the words "clysoir boule" may mean syringes having a rubber cylinder with metallic heads, or syringes having an oval rubber bulb like Exhibit "G." Is that so? (Objected to.)

Ans. It means either one or the other. They called 'em all clysoirs boule.

Int. 44. Apart from the language of the entry could you
177 say as matter of recollection which of the two kinds of clysoir boule it was that was shipped to you December, '54?

Ans. I can.

Int. 45. The term clysoir boule means either one or the other of the two kinds of syringes—either those with a rubber cylinder, like Exhibit "D," or those with an oval bulb, like Exhibit "G," if I understand you?

Ans. Yes, it does.

Int. 46. Why may it not have been the shipment of July, '55, called "clysoir boule," that related to the first syringes having an oval bulb like Exhibits "G" or "J?" The term "clysoir boule" being used there as well as in the invoice of '54, and used to denote either one or the other of the two constructions of syringes.

Ans. Because I know that these syringes, "Exhibit D," were the first that came from Paris. The others were made exactly like "G" and J," with wood tips and all, except the shape. What I mean is, that the first French syringes that came were made of white material like "J" and "G," but not of that shape—the pear or oval shape. They had wooden tips and brass caps. When I said they were similar to this, (Ex. "G,") I meant they were like in this part (pointing to the tips) and the same color of rubber.

Int. 47. Then, if I understand you, the clysoir boule, imported December, 1854, were like "Exhibit G" as respects the wooden tips and the color of the rubber, but like Exhibit "D" as respects the shape of the reservoir between the tubes?

Ans. That is it exactly.

Int. 48. Now, how is it as to the invoice of July, 1855? Do you know whether the "clysoirs boule" there mentioned were like those invoiced in December, '54, as to the shape of the reservoir between the tubes, or like the reservoirs in Exhibits "G" and "J?"

Ans. They must have been like "D;" I know it from the numbers, because we ordered all our goods by the numbers, and they would'nt send any different shape or form.

Cross-examination resumed.

By A. F. Badger, esq.:

Cross-int. 22. Do you find anything in the invoice book, by which you distinguish between syringes shaped like Exhibit "D," and those shaped like Exhibits "G" and "J?" If yea, what?

178 Ans. Not in this book, I cannot; and that makes me more positive that those like "G" and "J" never came until after August, '55. They must be in the other book. I do not know whether this book is in existence or not.

CHAS. EDWIN PRESCOTT.

Adjourned to 3½ p. m.

Deposition of Daniel H. Smith, taken, subscribed, and sworn to before N. Austin Parks, examiner.—Direct examination.

By Causten Browne, esq., counsel for complainants:

MAY 7, 1866.

Int. 1. State your name, age, residence, and occupation?

Ans. Daniel H. Smith; age, 49; residence, Newburyport, Mass.; occupation, machinist.

Int. 2. Were you ever in the employment of Charles H. Davidson, late of Charlestown, Mass.? If yea, when did such employment commence, and when did it cease?

Ans. I was in the employ of Charles H. Davidson, commencing in the latter part of '51, until the spring of '53.

Int. 3. While you were with him did you have any knowledge of any rubber syringe or syringes made by him or under his direction?

Ans. I did.

Int. 4. What was the construction of the first of such syringes that you saw in the possession of Mr. Davidson?

Ans. The first one that I knew to be in successful operation, or to be used, was one similar to the one I see before me on the table. ("Compl'ts Exhibit, No. 13.)

Int. 5. Did Mr. Davidson at that time tell you for whose use this syringe like "Exhibit No. 13 was designed?

Ans. He did.

Int. 6. What did he say?

Ans. That it was for his sister.

Int. 7. Did you yourself have anything to do with the making of this syringe like "Exhibit No. 13?"

Ans. I think I did.

179 Int. 8. What part of it, if any, do you think you made or worked upon?

Ans. I think I made this three-way connection.

Int. 9. Look at "Compl'ts Exhibit No. 12," and say whether who can identify it.

(Objected to.)

Ans. I cannot.

Int. 10. How does it compare with the three-way connection, which you made, so far as you can see?

(Objected to.)

Ans. I don't know how I made the three-way connection, and can't tell whether it would compare or not. Still I can say that I made such a three-way connection as in "No. 13;" but there is more than one way of making it, and I don't wish to be understood that the one I made was exactly like that in "No 13." The different ways of making a three-way connection are these; the screw which is upon the outside of "No. 12" might be on the inside of another one that was made.

Int. 11. Can you identify "Compl'ts Exhibit No. 8?" If so, what is it?

Ans. I identify seeing such a thing as that several times in Mr. Davidson's shop, but I wouldn't swear that it was the same one. It was exactly like it.

Int. 12. What was the use of it?

Ans. It was to be used as a bed-pan for an invalid.

Int. 13. In connection with what?

Ans. With a syringe; the description I cannot give any better than to say that the one before me, "Compl'ts Ex. 13," is like the one that was used in connection with it.

Int. 14. Did you, at any time after seeing this syringe like "Exhibit 13," and the bed-pan No. 8, have anything to do with the making of moulds for any other construction of rubber syringe?

(Objected to.)

Ans. I did.

Int. 15. What did you do about it? State fully.

Ans. Sometime in the year '52 Mr. Davidson wished me to go to New York with him for the purpose of ascertaining how to make metallic moulds, for making rubber syringes of a different pattern from "No 13." We went to New York to Mr. Goodyear's, or his agent's; he referred us to another party, a mechanic, who made all their moulds; from him we got the desired information, and returned
180 home and went to work the next day making some iron moulds; said iron moulds being for the purpose of making soft metallic moulds in, as in making rubber articles hollow it is necessary to have moulds made of particular composition, or compound of metals. We made the soft metal moulds in the iron moulds and sent them to the rubber company in New York.

Int. 16. Will you describe the shape of these soft metal moulds which you so made?

Ans. They were made in halves, and when put together their shape was this: The centre part of it being some five inches long, four inches wide, as near as I can recollect, and four inches thick, making a square piece, but that the corners were cut off. On each end of this central part there was an extension of a piece about sixteen or eighteen inches long, more or less, and two or two and a half inches square.

Int. 17. What was the shape of the interior of these moulds which gave form to the article moulded?

(Objected to.)

The witness, by permission, referring to deposition of Thomas D. Clough, says: It was near enough to the shape drawn by Thomas D. Clough, in his answer to the sixth question. He hasn't got it quite full enough in the centre part.

Int. 18. You say you went with Mr. Davidson to New York about those moulds some time in 1852. State the month, if you can.

Ans. I think December.

Int. 19. Between the time that you so went to New York and the time when you had first seen the syringe-like "Exhibit 13," how much of an interval was there, to your best recollection?

(Objected to.)

Ans. Three or four months.

Int. 20. If during this interval anything was done in Mr. Davidson's shop in the way of work upon rubber syringes of any kind, will you state what it was, and what, if anything, you had to do with it?

(Objected to.)

Ans. In this time spoken of I saw Mr. Davidson experimenting with rubber balls; making—I know that he was making—syringes; trying to, by using a rubber ball and flexible pipe; making, I should think, two or three different patterns. My work was making the metallic parts.

Int. 21. Do you recollect anything about the particular matter of connecting the flexible pipe with the rubber ball? If so, state what.

181 Ans. I do recollect one day assisting Mr. Davidson to put a short metallic pipe into a nearly round hollow rubber ball. A hole being cut in the rubber, at opposite sides in the ball, we inserted a short metallic tube, and then by fulling or forcing the rubber down over the tube in such manner as we could wind a string around the rubber so as to confine the tubes to the rubber ball, leaving the tubes projecting from the rubber ball some little distance—perhaps an inch, as near as I can recollect. Upon these metal tubes Mr. Davidson drawed on a rubber pipe, similar to one in Exhibit 13, as it is there shown drawn on. The other ends of these tubes were supplied each with a piece of metal with a valve to it, so as to make a syringe, as we couldn't make it without some kind of a valve.

Int. 22. When was this, before or after you and Mr. Davidson went to New York?

A. This was before.

Int. 23. If during this interval between your first seeing the syringe like Exhibit No. 13 and your going to New York with Mr. Davidson you knew of any work of his, or in his shop, on different kinds of valves for syringes, will you state all that you remember.

(Objected to.)

Ans. I remember Mr. Davidson experimenting with rubber and metallic valves; that's all I can say in regard to it. There's nothing very definite fixed in my mind about it. It has just come

into my mind that he tried oil silk for valves. Those were not good, for one reason, which Mr. Davidson suggested—that there would be sometimes acids or alkalies, or some solvents used that would destroy such fabric.

Int. 24. Do you personally know whether or not, before you went to New York with Mr. Davidson, there had been soft metal moulds of the same shape as those you have described, which did not prove successful?

(Objected to.)

Ans. I do not.

Int. 25. When did Mr. Davidson close out his business in Charlestown where you were employed by him? (Objected to.)

Ans. He sold out his machinery, yacht, and all the tools he had there some time in April or May, '53, I don't know which. I think it was in April or May.

Int. 26. What did he do, or where did he go after that?

182 Ans. I don't know what his business was. He went to California sometime soon afterwards; I don't know when.

Int. 27. From the time the soft metal moulds that you have mentioned were prepared, until the time Mr. Davidson sold out his business as you have mentioned, how many rubber syringes, as nearly as you can remember, were made by him, or in his shop?

Ans. I can't remember any number in particular. It might have been half a dozen, or it might have been a dozen, I can't tell which.

Int. 28. What moulds, if any, were used for making these syringes?

Ans. The soft metallic moulds before spoken of, that were sent to New York, and also some moulds to make the small metallic pieces that were attached to each end of the pipe.

Int. 29. Can you produce any of such small metallic pieces which made part of any one of those syringes?

Ans. Yes, sir; there are four pieces that were made at that time. I know them to be such, for they have been in my possession ever since. They are screwed together in pairs. The first pair is marked "Compl'ts Exhibit 20," the second "Compl'ts Exhibit 21."

Int. 30. Do you know what was done with any of the syringes so made before Mr. Davidson sold out?

Ans. I do not, with one exception. He presented me with one.

Int. 31. Was there any, and what, difficulty about the work of these syringes made at this time?

Ans. The only thing that I can think of was that some of the rubber portion of it was imperfect. It was where the small part or tube connected with the bulb or ball; as near as I recollect some of them would leak there right at the junction.

Cross-examined.

By A. F. Badger, esq.:

Cross-int. 1. Do you mean to swear that the syringe you first saw in Davidson's shop, which you say was like Exhibit No. 13, had a flexible induction pipe?

Ans. No, sir; I do not.

Cross-int. 2. Did the syringe you first saw there have valves?

Ans. Yes, sir.

Cross-int. 3. Where were they located?

183 Ans. I cannot point the place; but think they were both in the three-way piece.

Cross-int. 4. Of what material were those valves made, and how attached?

Ans. I cannot tell. If I could, I could tell where they were situated.

Cross-int. 5. Do you mean to swear that the first syringe you saw in Davidson's shop was in all particulars like Exhibit No. 13?

Ans. No, sir.

Cross-int. 6. How does it differ?

(Objected to, witness not having testified that it differed.)

Ans. I don't know.

Cross-int. 7. How do you know it had valves, if you cannot tell where they were located, nor of what they were made?

Ans. Only from the fact, in mechanics, that it would be impossible to make a pump of this kind without valves; and also, generally in speaking or talking on the matter with Mr. Davidson, we had frequent discussions in regard to modes or forms of valves to be used.

Cross-int. 8. Did these discussions occur at the time the first syringe of which you have test ified was being made?

Ans. I could not say.

Cross-int. 9. Had you, up to the time of making the first syringe, seen valves of different constructions, designed to be used in syringes?

Ans. No, sir.

Cross-int. 10. How certain are you that you made the three-way connection for the first syringe that you say you saw at Davidson's?

Ans. It is only from this fact, that Mr. Davidson in all his experiments, where there was any metal parts to be made, called upon me to make them.

Cross-int. 11. Aside from that, have you any recollecting of making such a piece for the first syringe?

Ans. I think I have; but it is indistinct. I wouldn't swear that I have any recollection, because we made so many, or several, other experiments in which there were metallic parts, that it would be difficult for me to swear that I made any particular piece, it was so long ago.

Cross-int. 12. Do you intend to swear that you made a three-way piece for a syringe, substantially like "Exhibit 12," in the year 1852?

Ans. No, sir.

184 Cross-int. 13. Can you state when first you saw "Exhibit No. 8," or something like it?

Ans. It was some time in the summer of '52; I cannot tell the month.

Cross-int. 14. How do you fix the date as in the summer of '52? State fully.

Ans. In the first place, I know it was very warm weather. I know it was in '52 from a certain amount of work that had been done after I went to work for Mr. Davidson.

Cross-int. 15. How do you know it was to be used with a syringe like "No. 13," as stated in answer to thirteenth interrogatory?

Ans. Mr. Davidson told me so.

Cross-int. 16. Do I understand you to swear that you went to New York with Mr. Davidson in December, '52?

Ans. I do not swear to it.

Cross-int. 17. When will you swear that you first went to New York with Mr. Davidson, "for the purpose of ascertaining how to make metallic moulds for making rubber syringes?"

Ans. I can swear that it was in 1852 or '53.

Cross-int. 18. Did the New York people make the first rubber for Davidson's syringes of the general shape of the drawing in Clough's deposition, referred to by you?

Ans. They did with this exception—they were fuller, bigger across the centre than the drawing; otherwise, substantially the same.

Cross-int. 19. What was the name of the person, firm, or company, that made this first rubber work for Davidson?

Ans. I do not know.

Cross-int. 20. What was the name of the mechanic referred to in answer to the fifteenth interrogatory, to whom Mr. Goodyear or his agent referred you as making their moulds?

Ans. I do not recollect. It was a German name—very odd.

Cross-int. 21. Did he show you moulds for different patterns of rubber work? and if yea, please describe all you can remember.

Ans. I couldn't swear whether we saw any there or not. It's my impression that he did not show us any of any kind.

Cross-int. 22. How soon after your visit to New York did Mr. Davidson receive his first rubber work for syringes?

185 Ans. I do not remember.

Cross-int. 23. About how long?

Ans. I wouldn't swear to any time. I should think two months, as near as I can recollect.

Cross-int. 24. What was the condition of the first rubber work which came to Mr. Davidson from the rubber company of New York?

Ans. I've no recollection of whether it was good, bad, or indifferent.

Cross-int. 25. Had Mr. Davidson received any rubber work for syringes of the pattern drawn by Clough, and referred to in your deposition, from any parties prior to your visit with him to New York?

Ans. I don't know of any.

Cross-int. 26. Do you mean to swear that the experiments of Mr. Davidson with rubber ball and tubing took place in the interval between your seeing the first syringe, which you say was like "Exhibit No. 12," and the time of your going to New York with him?

Ans. No. I do not mean to swear that, but I have no doubt of it in my own mind.

Cross-int. 27. Describe particularly the two or three different patterns which you say, in answer to twentieth interrogatory, Mr. Davidson made.

Ans. I can only describe the one I have already described. I couldn't describe the others. I know that we were making alterations in the metallic parts from time to time.

Cross-int. 28. Give a minute description of the metallic parts of any syringe, or experiment for syringes, that you will swear you made in 1852?

Ans. I cannot give a minute description of any metallic part that I made.

Cross-int. 29. Can you swear that you made any metallic parts of syringes in 1852?

Ans. No, sir.

Cross-int 30. Do you know whether or not Mr. Davidson had had any correspondence with the rubber company of New York on the subject of the construction of syringes previous to your going there with him?

Ans. I do not.

186 Cross-int. 31. While you were employed at Davidson's shop, did you ever see a rubber syringe not of Davidson's manufacture?

Ans. I've no recollection of ever seeing one.

Cross-int. 32. Who were employed in Davidson's shop with you at that time? Give the names and residence of each so far as you know them.

Ans. Thomas Clough, of Charlestown, Mr. Pattee, Mr. Miller, dead I believe, and a Mr. Wm. Brown, I don't know where he lives, and I may be wrong as to his being there when we were at work on syringes. Joseph Flanders, dead; that's all I recollect. I do recollect another, who was there but a short time, named Fuller; haven't seen him since.

Cross-int. 33. Upon what sort of work was Fuller employed when there?

Ans. Finishing some metallic pieces like those (Exhibit "20" and "21").

Cros-int. 34. Who owned the tools and machinery used in the shop at that time?

Ans. I suppose Mr. Davidson did.

Cross-int. 35. Apart from "Exhibit No. 13," can you now give a description of the first instrument which you say you saw at Davidson's shop, and of its various parts and mode of operation, that you would be willing to swear to.

Ans. No, sir.

Direct examination resumed.

By Causten Browne, esq.:

Int. 32. In answering one of the cross-interrogatories, you said, "I do not mean to swear that; but I have no doubt of it in my own mind." Understanding that I mean by my questions only to ask for your best

recollection on the several points mentioned, I will ask you, first, What is your best recollection as to the year and month when you and Mr. Davidson went together to New York?

Ans. To the best of my recollection, it was in December, 1852.

Int. 33. Why do you think it was in December, 1852?

Ans. I think there had been no snow on the ground when we went to New York, and on our return we came home in a storm; and it's my impression that we were a little surprised at so violent a storm so early in the season.

187 Int. 34. How long were you gone on that visit?

Ans. We went one night and back the next, I think.

Int. 35. How soon after you returned did you begin on the moulds?

Ans. The next day.

Int. 36. How many days do you believe it was from that time till the time you sent a mould to New York? (Objected to.) State as nearly as you can.

Ans. Perhaps from twenty-five to thirty-five days; not less than one nor over the other.

Int. 37. Do you remember how long after you sent the first mould to New York you received the rubber work made in that mould?

Ans. I don't remember the time.

Int. 38. You say, in answer to first cross-interrogatory, that you don't mean to swear that the syringe you first saw in Davidson's shop, which you say was like Exhibit 13, had a flexible induction pipe. Why can you not swear so? What is your best recollection upon the subject?

(Objected to.)

Ans. According to my best recollection, it had a flexible pipe.

Int. 39. In answer to fifth cross-interrogatory you say you don't mean to swear that the first syringe you saw in Davidson's shop was in all particulars like Exhibit No. 13. Will you state any difference between the parts of Exhibit No. 13 and the first syringe you saw in Davidson's shop?

Ans. The difference between that and this is, that the glass jar was larger in diameter than this one, and I think not quite as high. Perhaps it would hold about the same quantity. The hole in the top was much larger thon this, nearly as large as the jar itself. I should judge it was a confectionery bottle—such as confectioners' use—large and open mouthed. I think there was no horn in the mounting of that; of this I am very positive.

Int. 40. Did Mr. Davidson, when you first saw this syringe like Exhibit No. 13 in his possession, explain to you how it was to operate?

Ans. Yes, sir.

Int. 41. What explanation did he give of that matter?

Ans. I cannot use his language, but the substance was this: He told me, in the first place, of the state of health of his sister; that she couldn't be moved in bed, and he wanted to design a pan

188 and syringe to be used in conjunction. I recollect his talking with me about how to do it. I don't know as he ever told me

as to how that was to operate. It was so simple it would have seemed superfluous to explain it to me.

In. 42. You did not see the syringe like Exhibit 13 till after it was made, did you?

(Objected to.)

Ans. I did not see it, except, I think, I saw some one or two of the metal parts being made. The rubber I didn't know anything about till I saw it together, or Mr. Davidson, perhaps, putting of it together.

Int. 43. You say, in answer to twenty-ninth cross-interrogatory, that you cannot swear that you made any metallic parts of syringes in 1852. What is your best recollection about it?

Ans. My best recollection is that I did.

Int. 44. What do you remember as to the interval of time, if any, between the making of the instrument like Exhibit No. 13 and the making of the bed-pan Exhibit 8, to be used therewith?

(Objected to.)

Ans. Well, I cannot state any particular time. I think we were at work on the the syringe first.

Int. 45. Do you remember any sketch of the bed-pan? If so, who brought it to the shop?

Ans. I recollect seeing a drawing, either in the hands of C. H. Davidson or his brother Herman, and of their showing of it to me, asking me some questions about it. We had some conversation about it; I don't remember the language. It was probably in regard to the way the metal should be bent over to bring it over to this form.

Int. 46. Are you able to say how long before the making of the bed-pan the syringe like Ex. No. 13 was made

(Objected to.)

Ans. I couldn't say definitely to any particular day or week, but some time before. I know that we were experimenting on this syringe some time before it was completed—perhaps four to six weeks, I should thin.

Int. 47. Was the order for the bed-pan given before or after the drawing was brought into the shop and shown to you by Mr. Davidson and his brother?

Ans. I presume the order for the bed-pan was not given till after they had consulted me about its construction.

Int. 48. Was the syringe like Exhibit 13 made before or
189 after the consultation about the construction of the bed-pan? and if before, can you say how long before?

(Objected to.)

Ans. It was made before the consultation; I think it might have been some weeks—only from this circumstance that I recollect C. H. Davidson feeling very much pleased one day while exhibiting to me the whole of it together. He had been over to Boston, (I think it was Boston,) brought home this pan, put it on the bench; went into his private office and brought out a syringe like this Exhibit No. 13, and placing of it in its place designed in the pan, called my attention to it.

Cross-examination resumed.

Cross-int. 36. Is your recollection sufficiently clear to enable you to say on oath that the first syringe you saw at Davidson's shop, which you say was like "Exhibit No. 13," was made before the bed-pan "Exhibit No. 8"?

Ans. Yes, sir.

Cross-int. 37. How long before?

Ans. I think we were to work on it, I should say, some weeks before the bed-pan was brought into the shop. I couldn't say months that I know of, but at least some weeks.

Cross-int. 38. Was more than one instrument made like "Ex. No. 13"?

Ans. There was not—not exactly like it. I think, previous to this pattern being made, we had made other forms, or attempted other forms in metal work. I won't say it was in rubber.

Cross-int. 39. This one that was made like "Ex. 13" was in the shop when the bed-pan came in, was it not?

Ans. Yes, sir.

Cross-int. 40. When did you first see the bed-pan, "Exhibit No. 8"? Fix the dates between which you are willing to swear you saw it.

Ans. Between the time we were to work on the instrument like "No. 13," and the time we went to New York. I've got that date, sure. I recollect that it was in the summer time that we were making a thing like "Exhibit No. 13;" should think it was in July or August. To the best of my recollection, I went to New York, as I have testified before, in December.

Cross-int. 41. Was the bed-pan made during the hot weather?

190 Ans. I think the bed-pan was brought into the shop some time in the fall. I have a recollection of the day, the aspect, and weather. As near as I can recollect, it was some autumn day.

Cross-int. 42. How long before you went to New York was the bed-pan brought in, and the instrument like "No. 13" placed in it, to the best of your recollection?

Ans. To my best recollection, it was from four to six or eight weeks. Some few number of weeks.

Cross-int. 43. When, to the best of your recollection, was the first work done on moulds for rubber syringes in Davidson's shop?

Ans. In December, '52.

Cross-int. 44. Was any work on moulds done in that shop before you went to New York?

Ans. Not for making the rubber parts, so far as I know.

Cross-int. 45. Fix the date when you will swear you first saw a rubber syringe substantially of the pattern drawn by Clough, so completed as to operate as a practical syringe.

Ans. I should say it was in March, '53, as near as I can recollect; February or March. It might have been as early as February. I know it was some weeks previous to his selling his machinery and tools.

Cross-int. 46. Where is the syringe which you say Davidson gave you?

Ans. The remnants of it are in Newburyport.

Cross-int. 47. When did he give it to you?

Ans. Before he went to California.

Cross-int. 48. Will you produce it that it may be annexed to your deposition as an exhibit?

Ans. If possible. I couldn't say positively whether it may not be thrown out. I've seen it within a year, but haven't used it, as I have another one of Mr. Davidson's latest patterns.

Cross-int. 49. Did the first syringe you saw like "Ex. 13" have a brass band about the neck of the bulb?

Ans. I couldn't say whether it had or had not.

Cross-int. 50. Did it have a delivery pipe like the one on "13"?

Ans. I recollect particularly to the vaginal pipe.

Cross-int. 51. Are you as certain that the induction pipe on
191 the instrument you first saw was flexible as of any other testimony you have given to-day?

(Objected to.)

Ans. No, I am not as certain that it was flexible as of any other testimony that I have given to-day.

Cross-int. 52. Are the facts so fixed in your mind that you can now swear that the induction tube on that instrument was flexible?

Ans. It's only my impression that it was flexible. I believe that it was a flexible pipe.

D. H. SMITH.

192 *Additional testimony for respondents.—Deposition of Abel F. Farrar, taken, subscribed, and sworn to before Winslow Warren, jr., U. S. Com'r, May 5th, 1866.—Direct examination:*

By A. F. Badger, esq., counsel for defendants:

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is Abel F. Farrer; my age is fifty-four; my residence, Rindge, New Hampshire; my occupation, that of farmer at home, and some times, when away, merchandise broker.

Int. 2. State whether or not you have been in the employ of G. N. Davis, of Boston; and if yea, when you entered his employ and when you left it.

Ans. I entered his employ in March, 1854, and was with him six years, until they failed. The stock fell into my hands after their business was closed.

Int. 3. State when you first had knowledge of a rubber syringe having an elastic bulb, two flexible tubes, and suitable valves for receiving and ejecting fluids, and the circumstances which led to that knowledge.

Ans. Very soon after I was with Davis, previous to the 1st of May, 1854, he took me out to the factory at Roxbury to show me how rubber goods were made, that I might have an idea of the business. Among other things there I saw (an) unfinished syringe of

Davidson pattern. I represented to him that that was a first rate thing, and he said (objection to testimony of the conversation) that it was a humbug and amounted to nothing, and never could be made to work. I told him it could be, for it had been; just such things were at work in Europe. He told me to take home a couple of them and see whether I could make them work. I took a couple of the best I found there; took them home and experimented with them.

193 In connection with water treatment, which I was administering to my wife, I knew that there were elastic syringes (objected to) where a continuous stream of fluid could be injected without removing the tube, and the sight of those Davidson syringes brought it all to mind; and that was the ground of my confidence. About that time there was a syringe brought into the store for repair, by somebody's servant, that I showed to the clerks in the store as the European article I had seen described; called Mr. Lewis's attention again to the fact it could be made to operate, and advised him to buy off a claim that I didn't consider worth a dollar, to get it out of the way.

Int. 4. Describe particularly the Davidson instruments which you saw at the factory in Roxbury, the different parts of which it was composed, and the condition of the instrument.

Ans. An elliptical bulb like Exhibit 19, tubes and bulb in one piece of rubber, cut from one sheet of equal thickness, rolled together and joined by a seam. It had no valves—nothing but the naked rubber part; it was evidently made for valves to be applied to the ends, but there were no valves, no metal part to it.

Int. 5. Describe particularly the instrument brought to the store for repairs, mentioned in answer to interrogatory third.

Ans. It was a straight barrel like "Exhibit D," double that size—rubber ends—I think a metallic ring confining the end to the edge of the barrel; tube came through the rubber end, and was fastened upon the inside. The valves were next to the barrel.

Int. 6. Give the length of the tubes, if more than one, and the material of which they were composed; describe the method of operation in use.

Ans. The tubes were about seven or eight inches long, flexible, but I think not elastic, and operated by compressing the barrel; the tubes and barrel were of rubber.

Int. 7. How do you know such instrument had been in use before that time?

(Objected to.)

Ans. By some description of administering the water treatment in Europe. It must have been printed, probably in the form of letters to some newspaper.

Int. 8. Did you ever have any conversation with Charles H. & Herman E. Davidson, or either of them, upon the subject of
194 rubber syringes? If yea, state when and where such conversation occurred, and the substance of it, to the best of your recollection.

Ans. Yes, with Chas. H. Davidson. It must have been in May or June, early in 1854, at Geo. N. Davis' store. I told him he hadn't calculated the forces in his syringe—from my experiments I found the trouble of having the valves at the end; showed him by having them there at the ends, by compression upon the bulb the least imperfection upon any part af the tube would be felt, and he would lose his force; and unless the tubes were made doubly as thick as the valves, they would be liable to expand, and he would lose his force so. The idea was that he didn't comprehend what he wanted to do, and soon as he did, he would do it. He evidently wanted to sell his right, and complained that the syringes hadn't been made as he wanted, if they had they would have worked. I showed him that his orders had been carried out exactly. We had another conversation afterwards; that one was the first conversation—after that foreign syringe had been brought in. I think the second conversation was about the same.

Int. 9. State whether or not you made any suggestions to him as to a change in the position of the valves; and if yea, what was it.

Ans. I did; that they should be moved up next the bulb.

Int. 10. State whether or not you afterwards saw the Davidson syringe, with the valve placed between the bulb and the flexible tubes; and if yea, when for the first time.

Ans. About the time that Mattson's syringe was brought into the store to sell, two or three weeks after we had a Davidson syringe there.

Int. 11. How long was this after the conversation with Davidson, in which you suggested a change in the position of the valves?

Ans. It might have been four or six weeks.

Int. 12. State your reasons, as given to Davidson, for the change in the position of the valves.

Ans. 'Twould overcome the difficulty of bulges in the tubes, increase the command of the fluid in the syringe, the elasticy of only one tube would be felt at the time, if we had to have elastic tubes. I recommended cloth tubing with elastic ends.

Int. 13. State, if you know, who sent the syringe for repair, spoken of in your answer to the third interrogatory.

Ans. I have no doubt it was Dr. Channing.

195 Int. 14. About how long a time previous to seeing the instrument brought in for repair, had you read the account spoken of in answer to the seventh interrogatory?

(Objected to.)

Ans. I commenced that mode of treatment in 1843 or 1843. I had been seeking information on it all the time—I think it must have been in the acquisition of that knowledge, that I read of this instrument as one of the means of treatment.

Int. 15. State whether the instrument brought to Davis for repair was of domestic or foreign manufacture.

Ans. It was said to be of foreign; we knew it to be so afterwards.

Int. 16. State whether or not Davis had rubber syringes of foreign manufacture, answering the description given in interrogatory third, or sale, when you were in his employ; and, if yea, when for the first time.

Ans. In the fall of 1854; an invoice purchased by John Haskins in Europe; both English and French.

Int. 17. State what, if any, conversation you had with Davidson as to selling out his interest in the syringe.

(Objected to.)

Ans. I had a conversation with him, and received the impression that he would sell out cheap—no definite amount fixed; there was nobody to buy. I hadn't the means myself.

Int. 18. Did Davidson ever say anything to you, or in your presence, indicating his discouragement or intention of abandoning the syringe?

(Objected to.)

Ans. The second conversation we had, the trouble of getting them made as he said he ordered them, was given as a reason why he didn't devote his time to it and put it through, he claiming that he had to take so many that didn't work, that he couldn't make it profitable. I showed him at that time that it was his want of appreciation of the material and the mode of working it, and if he would go to work and change its form, he could make it practical.

Int. 19. When did you first see a syringe of Davidson's manufacture that would operate for practical purposes?

(Objected to.)

Ans. I should think it not earlier than September, 1854; and it might have been as late as November. I have nothing to fix that date by, except the general succession of events.

Int. 20. Was it before or after the Mattson syringe, having an elastic bulb and two flexible tubes, was in the market?

196 Answer. The Mattson elastic syringe, with one elastic tube, and perhaps two, were in the store first for practical use.

Cross-examination.

By Causten Browne, esq., counsel for complainant:

Cross-int. 1. Do you know, generally, how the Richardson syringes, so-called, are now constructed?

Ans. No, sir; I do not.

Cross-int. 2. I want to understand clearly about the construction of the syringe, which I call the Channing syringe for description's sake, which you have spoken of as having been brought into Davis's store for repairs. Do you mean that, except in the length of the rubber cylinder, it was like "Exhibit D?"

Ans. No, sir; the circumference of the rubber cylinder was double that of "Exhibit D," or nearly so. In "Exhibit D," the ends are metallic, that was rubber; if they had been metal I could have repaired it. That syringe was quite unlike those sent out by Haskins to Davis afterwards, in its construction; but its form and principle action was the same.

Cross-int. 3. Was the metallic ring which confined the rubber ends to the edges of the rubber barrel of the same diameter as the rubber ends?

Ans. Slightly larger; it was a simple binding like that of a coat. It seemed to be put on to keep the edges, after they were vulcanized, from opening. It was a simple brass binding.

Cross-int. 4. Was this brass binding of the same, or about the same, circumference as the rubber cylinder?

Ans. Yes, sir; about the same.

Cross-int. 5. Were the rubber ends or heads of this cylinder made rigid or inflexible in any way? If so, how was it?

Ans. They were not; they were flexible; but so thick as not to be elastic.

Cross-int. 6. Of whom was the Haskins invoice you have mentioned purchased?

Ans. Purchased of Mackintosh, the English portion of it; and the French portion of it was purchased, through a broker, of different manufacturers; the brokers commission was at the bottom of it.

197 *Direct examination resumed.*

By counsel for defendants:

Int. 1. Describe the French syringes purchased by Haskins.

Ans. They were all of the general constructions of Exhibits "G" and "J;" they were purchased of different manufacturers. I should think as many as seven to ten different patterns and qualities. They were not vulcanized syringes, according to the Goodyear process; not all of them—some of them were—described to me as cured by the acid process.

Cross-examination resumed.

By Causten Browne, counsel for complainant:

Cross-int. 1. Will you undertake to swear that at any time in the year 1854 you saw in this country a syringe of French manufacture which had two flexible tubes and an elastic chamber, not of a cylindrical form like that shown in Ex. D, but of an oval form like those shown in Exs. G and J?

Ans. Geo. N. Davis received from France, as the result of Haskins's visit, such syringes; his invoice would show the date—I believe in the fall of 1854.

Cross-int. 2. How long after your first conversation testified to with Mr. Davidson did these French syringes you speak of arrive?

Ans. Perhaps six months—five or six.

Cross-int. 3. Well, if Mr. Chas. H. Davidson was in the State of California throughout the year 1854, and did not return to Massachusetts until the winter of 1854 and '55, don't you think it was in the fall of 1855 that you saw these syringes?

(Objected to.)

Ans. No, sir; I don't know Mr. Davidson, but somebody in his interest that I supposed to be him had these conversation with me.

Cross-int. 4. Do you know Dr. H. E. Davidson, the brother of Chas. H. Davidson?

Ans. I don't think I ever knew but one of them; I supposed it was Charles H.

Cross-int. 5. Where is the invoice book of Geo. N. Davis?

Ans. I don't know.

Cross-int. 6. Apart from the invoice book of Geo. N. Davis, will you undertake to swear that it was in the fall of 1854, and
198 not in the fall of 1855, that those French syringes arrived? If so, will you state all the circumstances that make you know it after the lapse of eleven or twelve years.

Ans. It was in the fall of 1854, and not in the fall of 1855, and one of the circumstances—when the invoice arrived he employed a man outside to come into the store and calculate the cost of the articles—what each individual article cost; that was done after the man had worked half a day and I had waited for his prices. I took the invoice and cast the cost of all the individual articles and marked them; that was before Mr. Davis became acquainted with my facility in figures, while I was early there; the place in which we put the goods when they came in after being at the store some four or five months or more. I re-arranged the whole store and that would fetch the goods into a different place from what they were after I arranged it. After that invoice of French surgical instruments arrived, (and there were a great many of them besides syringes,) he sent to his brother from California, who was an educated physician. to take care of the medical department. His arrival was early in 1855. It became G. N. Davis & Brother after that time.

Cross-int. 7. Who was the man that was employed to come into the store and calculate the cost of the articles?

Ans. I don't remember his name; I frequently meet him. The last I knew of him he was in the commission business in this city with the British provinces. He was an Englishman or a Blue Nose.

Cross-int. 8. Can't you help us any further to identify or to find him?

Ans. Yes, sir. Finney, the book-keeper at that time, John Doyle, now at Henry Hall's, corner of Milk and Congress streets, either of them, I think, would remember his name. Doyle has a very good memory for names, and I a very poor one.

A. F. FARRAR.

199 *Deposition of Wm. H. Finney, taken, subscribed, and sworn to before W. Warren, Jr., U. S. Com'r, May 9th, 1866.—Direct examination.*

By A. F. Badger, esq., counsel for defendants:

Int. 1. Please state your name, age, residence and occupation.

Ans. My name is William H. Finney; my age is thirty-three; I reside in Charlestown, Mass.; I am a book-keeper.

Int. 2. Were you ever in the employ of Geo. N. Davis of Boston? and if yea, in what capacity? when did you enter his employ, and when did you leave it?

Ans. I have been. I entered in 1850 or '51, and left in November, 1855. I was book-keeper.

Int. 3. Do you know what became of the books of George N. Davis?

Ans. I left them with the firm when I left in charge of another book-keeper, since which time I have not seen them.

Int. 4. Look at defendant's Exhibit G, and state when and where, for the first time, if ever, you saw instruments like it.

Ans. I have seen instruments similar, and I think, exactly like this, in Mr. Davis' store, I think in 1853 or 1854.

Int. 5. About how many such instruments in 1853 and 1854, to the best of your recollection?

Ans. I think two or three dozen, perhaps more. There were a number of invoices of rubber goods imported by him at different times, and nearly every invoice, I think, contained syringes similar to those marked Exhibit G.

Int. 6. State whether or not instruments like Exhibit G were in said Davis' store at or about the time A. F. Farrar entered the employment of said Davis.

(Objected to as leading.)

Ans. I am not certain they were in the store, but I am quite confident they had been imported before Farrar entered. If not before, very soon after he entered Mr. Davis' employ.

Int. 7. State where, if you know, said instruments were obtained.

(Objected to.)

200 Ans. They were imported from France, but of whom I do not recollect.

Int. 8. State whether or not said Davis had in his store at or about that time other rubber syringes differing from Exhibit G; and if yea, describe the same.

(Objected to.)

Ans. He had a number of different styles of syringes; one style that I recollect was with a bulb which was set in a metallic form. I don't know that I can describe it, it; came in a tin box, a round tin box. The bulb was worked by pressure of the thumb. It had, I think, two elastic tubes which were connected by being placed over metallic, I might say, orifice. We had other syringes, some were merely rubber bags with an elastic tube. Those are all I recollect sufficiently well to describe them. I did not mean to say the elastic tubes were connected together, but they were connected to the instrument; they were slipped over metal tubes.

Int. 9. State whether or not the elastic tubes spoken of in your last answer were flexible.

(Objected to as leading.)

Ans. They were.

Int. 10. Look at defendant's Exhibit J and state whether you ever saw instruments like it before; and if yea, when and where for the first time.

Ans. I have seen instruments like it; and, I think, for the first time, in 1853 or 1854; and in Mr. Davis' store. This is the one I referred to in my previous answer.

Int. 11. Are you acquainted with John Haskins, of Boston?

Ans. I am acquainted with John Haskins, who, I believe, resided in Roxbury when I was in the employ of Mr. Davis.

Int. 12. Did Mr. Haskins, when you were in the employ of Davis, do any business for said Davis? and if yea, when and what?

Ans. He did; for some time previous to 1853; in carrying on a rubber factory in Roxbury, and, I think, in purchasing rubber goods or giving orders for them in Europe. This purchasing goods, or giving orders, I do not remember the exact date or the year.

Int. 13. State whether or not goods came to the store as the result of such foreign purchases or orders while you were there employed.

(Objected to.)

Ans. I think such goods did come to the store. Mr. Haskins brought with him a large variety of rubber goods, principally
201 samples; and I think that an invoice was received shortly after his arrival, as the result of Mr. Haskins' orders.

Int. 14. When, to the best of your recollection, did Mr. Haskins bring these samples. and when did the invoice spoken of in your last answer arrive?

Ans. I do not remember the date of Mr. Haskins's return, but I should judge in 1853 or 1854; it may, perhaps, have been later than that.

Int. 15. Did you know of Mr. Haskins going to Europe more than once while you were in the employ of said Davis?

Ans. No, sir.

Int. 16. State whether or not any syringes like "Exhibit G" or "Exhibit D" were among the samples or in the invoice spoken of in answer to the thirteenth interrogatory.

Ans. I cannot say positively; but I think some similar to "Exhibit G" were received in the invoice. I am not sure that I ever saw any syringes like "Exhibit D."

Int. 17. In answer to the thirteenth interrogatory you say Mr. Haskins brought samples with him. From what place do you mean?

(Objected to.)

Ans. I know that he brought some from England, and I think some from France; or rather I know that he stated that some were received from Mr. Charles Goodyear in England, and I think some from Mackintosh; and I have the impression he brought some from Paris.

Int. 18. In answer to the fifth interrogatory you say that a number of invoices of rubber goods were imported by him (Davis.) State, if you know, from what country or countries those invoices came.

(Objected to.)

Ans. They were imported from France, and some, I think, from England.

Cross-examination.

By Causten Browne, esq., counsel for complainant:

Cross-int. 1. What has been your employment since you left the employment of George N. Davis?

Ans. After I was employed by George N. Davis I was employed by George N. Davis & Brother as book-keeper. I left their

202 employment in 1855, and since then have been employed as book-keeper by William Appleton & Co., and S. Hooper & Co.

Cross-int. 2. What time in 1855 did you leave the employment of George N. Davis and brother?

Ans. In October or November. I think in November.

Cross-int. 3. Were Geo. N. Davis and brother the successors of Geo. N. Davis?

Ans. They were.

Cross-int. 4. When was that change made?

Ans. I can't say. I think a year; it may have been two years, or perhaps longer, before I left. Geo. N. Davis's brother was for some time before he entered the firm in the store, so I cannot fix the date when he entered as partner.

Cross-int. 5. Were the bill heads and signs and titles of accounts in the books changed when he entered the firm?

Ans. Yes, sir.

Cross-int. 6. Did you have any assistance in keeping the books of that establishment during the years 1854 and 1855?

Ans. Yes, sir; Mr. Doyle assisted me some, and I think Mr. Cleland was there a part of the time, and a Mr. Webb, as assistant book-keeper.

Cross-int. 7. Did these three persons act as salesmen also, or was their only occupation in the house at the time mentioned that of assisting in keeping the books?

Ans. Mr. Doyle acted as sales-man; the occupation of the other two was exclusively assisting in keeping the books.

Cross-int. 8. Was your occupation during the years 1853 and 1854 exclusively keeping the books?

Ans. Yes, sir.

Cross-int. 9. Where was the sale-sroom or warehouse of Geo. N. Davis, or Geo. N. Davis & Brother, during the years 1853 and 1854?

Ans. In Congress street. I think number 147 and 149.

Cross-int. 10. What was the business of the concern? What did it embrace, speaking generally?

Ans. The purchase and sale of rubber goods on commission.

Cross-int. 11. Was it a jobbing or retail house?

Ans. Jobbing house, though goods were sometimes sold at retail.

203 Cross-int. 12. Was it connected in business with any other American house?

Ans. It sold goods on commisson for a number of rubber houses in New York; one in Beverly.

Cross-int. 13. Except your commission business, did the house have any connection with any other American house?

Ans. None, except the purchase of goods at different times from parties in New York.

Cross-int. 14. Besides Mr. Doyle, who acted as salesman in the concern during the years 1854 and 1855?

Ans. Mr. Abel F. Farrar, I think, a Mr. Farrar, another man,

whose name I have forgotten, and there were one or two boys whose names I have also forgotten. Mr. Henry A. Hall acted as salesman while I was there, but I have forgotten whether he left before 1854, or not.

Cross-int. 15. How long before Geo. N. Davis's brother entered the firm had he been in the store, and what had been his duties?

Ans. I cannot recollect how long, he acted as salesman before he entered the firm.

Cross-int. 16. State, as nearly as you can from recollection, how long he had been there before he entered the firm.

Ans. It may have been two or three months, or it may have been longer.

Cross-int. 17. Was there, at any time during the years 1854 or 1855, any partner in the house besides Mr. Geo. N. Davis and this brother?

Ans. Mr. Davis's father was special partner in the firm of Geo. N. Davis & Brother, with that exception, there was no other partner.

Cross-int. 18. Where did Mr. Davis's father reside, if you know, during the years 1854 and 1855?

Ans. I think, in Augusta, Me.

Cross-int. 19. What was the age of Geo. N. Davis's brother, if you know, when he came into the store?

(Objected to.)

Ans. I don't know his age.

Cross-int. 20. Had you known him before he came into the store?

Ans. No, sir.

Cross-int. 21. Do you think it was as much as two years
204 before you left George N. Davis & Brother; that the brother was in the store in some capacity?

Ans. I think it was.

Cross-int. 22. Why do you think so?

Ans. I think so judging from the length of time that I knew him; it seems as though I had known him two years before I left.

Cross-int. 23. What was is name?

Ans. I think it was Benjamin G., though I am not sure. We called him Doctor.

Cross-int. 24. Had he come from California?

Ans. So he said, and so his brother said.

Cross-int. 25. State, if you know, where these two persons are; when you last saw them or knew of them, and where they then resided.

Ans. I do not know where they are. The last I heard from Geo. N. Davis was about a year and s half ago, when he was in Brazil. I have not seen his brother, I should think, for eight years. When I last saw him he was in Boston.

Cross-int. 26. Do you remember whether these syringes which you say were like Exhibit G, arrived before or after Benjamin G. Davis became a partner in the house?

(Objected to, the witness not having testified that the name was Benjamin G.)

Ans. I do not remember. I think before.

Cross-int. 27. And what time do you say you think those syringes arrived?

Ans. In 1853 or 1854.

Cross-int. 28. Was it before or after Mr. Haskins went out to Europe for the house?

Ans. I think there were some received before, and I know there were some received after.

Cross-int. 49. What was the nature of the business of the houses of Appleton and Mr. Hooper, in which you have been employed since you left the employ of Geo. N. Davis & Brother?

Ans. They were ship owners and importers of Chinese and East India goods.

Cross-int. 30. After you left George N. Davis & Brother, did you ever see a syringe like Exhibit G, until you were called upon to give your testimony in this case?

205 Ans. I do not think I have seen one exactly like that.

Cross-int. 31. What do you mean by "exactly like it"? What is the nearest to such a construction of a syringe that you have seen since you left George N. Davis & Brother?

Ans. I think the nearest is that syringe called Davidson's.

Cross-int. 32. When do you think you first saw a Davidson syringe?

Ans. The first time I saw a model or incomplete syringe of Davidson's was in, I think, 1854 or 1855; it was a bulb with two elastic tubes, without the valves—without the metallic finish. I believe it was said by Mr. Davis (objected to on part of complainant) that the proprietor had applied for or received a patent.

Cross-int. 33. When did Mr. Haskins return from Europe?

Ans. I do no recollect.

Cros-int. 34. State as nearly as you can from recollection.

Ans. I should think in 1854.

Cross-int. 35. Is that as near as you can say from recollection?

Ans. I have no means of fixing the date; it may have been earlier or it may have been later—a little later.

Cross-int. 36. Can you tell any nearer when he went abroad?

Ans. No, sir.

Cross-int. 37. Were invoices of rubber goods, including syringes, received by George N. Davis & Brother from time to time, during the last year you were with them?

Ans. I think they were.

Cross-int. 38. Are you not certain one way or the other?

Ans. No, sir.

Cross-int. 39. You say you think the firm became George N. Davis & Brother a year, or it may have been two years, or perhaps longer, before you left. Can you not come any nearer than that, as a matter of recollection?

Ans. I think it was more than a year; can't state it any more definitely, according to my recollection.

Cross int. 40. Why do you think it was more than a year? Is not that only recollection?

Ans. That is recollection, connected with the fact that I kept books for the new firm for more than a year.

Cross-int. 41. Have you consulted any book or memorandum
206 or paper to enable you to fix the time when the syringes which you say were similar to Exhibit G were received by your house?

Ans. No, sir.

Cross-int. 42. Have you consulted any person upon that subject?

Ans. No sir. The only reason that I have for fixing the date is my recollection that they were in the store a considerable length of time before I left; I should judge two years or more. I don't know that I want to say "more"—about two years.

Cross-int. 43. You say you have consulted no person on the subject of fixing this date. Do you mean that you have not talked with anybody upon the subject up to the time of coming to testify this morning, except the counsel for the defendant?

Ans. Yes, sir; that's what I mean.

Cross-int. 44. Have you talked with anybody upon the subject of the time in question since 1855?

Ans. I have not, to my recollection.

Cross-int. 45. In the absence of any consultation with any one —excepting of course the counsel this morning—for eleven years, and in the absence of any reference to any book or memorandum or paper to enlighten you upon that matter, are you prepared to say upon oath, as a matter of recollection, that the French syringes you have referred to as like Exhibit G were received in Geo. N. Davis & Brother's store before the year 1855?

Ans. Before I answer the question I would like to know what "as a matter of recollection" means. I am prepared to say to the best of my recollection they were received before the year 1855.

Cross-int. 46. Is the firm of Geo. N. Davis and brother now in existence? If not, when was it dissolved?

Ans. I think it is not in existence. I think the firm failed sometime after I left.

Cross-int. 47. Do you know where their books are?

Ans. No, sir.

Cross-int. 48. Have you seen them since 1855?

Ans. No, sir.

Cross-int. 49. Have you made or assisted to make any search for them or any of them?

207 Ans. Mr. Badger asked me to find them, but I have been so busy since that time that I have made no search for them.

Direct examination resumed.

By A. F. Badgers, esq., counsel for defendants:

Int. 1. State whether or not you gave Mr. Badger all the data within your possession that would aid in the finding of the books of Geo. N. Davis & Brother.

Ans. I told him where I thought it likely he might receive information in regard to their present location.

Int. 2. State what floor or loft Geo. N. Davis occupied when you entered his employ; and what, if any, change was made in the premises occupied by him while you were in his employ?

Ans. When I entered his employ he occupied the second story of a store in Congress street, and afterwards removed to another store a few doors from there, where he occupied the lower floor and cellar.

Int. 3. Can you tell when this change was made?

Ans. I do not recollect distinctly; I think it was about a year after I entered in his employment.

Int. 4. State whether you saw syringes like Exhibit G in the store of Davis while he occupied the second story, to the best of your recollection.

(Objected to as leading.)

Ans. I do not think I did.

Int. 5. State any fact which enables you to fix the date of your leaving the employment of Davis.

Ans. I was married in October, 1855, and left there the next month, I think, or the last of the same month.

W. H. FINNEY.

208 *Deposition of John H. Doyle, taken, subscribed, and sworn to before W. Warren, jr., U. S. Com'r.—Direct examination.*

MAY, 9*th*, 1866.

By A. F. Badger, esq. counsel for defendants:

Int. 1. Please state your name, age, residence and occupation.

Ans. My name is John H. Boyle; my age is 27; my residence Boston, Mass; and occupation that of book-keeper.

Int. 2. Were you ever in the employment of Geo. N. Davis; if yea, ie what capacity; when did you enter his employment, and how long continue in it?

Ans. I entered his employment in the fall of 1852, in the capacity of errand boy; and left his employment in the spring of 1859.

Int. 3. Look at defendant's Exhibit G, and state when and where, if at all, you first saw syringes like it, to the best of your recollection.

(Objected to.)

Ans. To the best of my recollection, I saw those in the summer of 1854, in the store of Geo. N. Davis & Brother.

Int. 4. Was the firm name Geo. N. Davis or Geo. N. Davis & Brother, at that time?

Ans. I do not remember exactly, but think it was Geo. N. Davis.

Int. 5. Where was George N. Davis' place of business at the time when you first saw syringes like Exhibit G?

Ans. In chambers, 144 Congress street.

Int. 6. State how many such syringes you saw at Geo. N. Davis', at or about that time, to the best of your recollection.

Ans. I cannot remember the exact amount—there may have been half a dozen or a dozen.

Int. 7. Look at Exhibit J, and state whether you have ever seen instruments like it.

Ans. I have.

Int. 8. When and where for the first time?

Ans. In the store of Geo. N. Davis, at about the same time of seeing Exhibit G.

209 Int. 9. Please to state all the facts and circumstances which enable you to fix the date when you first saw syringes like Exhibits G and J.

Ans. I know of no certain facts by which I can fix a certain time; both articles being new to me, naturally impressed themselves on my mind.

Int. 10. State whether it is within your knowledge that John Haskins, of Roxbury, purchased an invoice of goods in Enrope for Geo. N. Davis while you were in said Davis' employ.

Ans. To the best of my knowledge, early in the spring and summer of 1854 he did so.

Int. 11. Name any articles so purchased by said Haskins that you now remember.

Ans. The only articles that I now remember, with the exception of these syringes, Exhibits G and J, were a small rubber bag used for a balloon.

Cross-examination.

By Causten Browne, esq., counsel for complainant:

Cross-int. 1. What has been your employment since you left Geo. N. Davis and brother?

Ans. A part of the time as entry clerk with Boyd, Fuller & Jenkins, and Jordan, Marsh & Co., and as book-keeper for Henry A. Hall.

Cross-int. 2. What was the business of these concerns while you were with them?

Ans. The first two named were importers and jobbers of dry goods; the latter, dealer in rubber goods.

Cross-int. 3. When did you become book-keeper to Mr. Hall?

Ans. In the spring of 1863.

Cross-int. 4. State, as nearly as you can from recollection, when Mr. Haskins went out to Europe for Geo. N. Davis, or Geo. N. Davis & Brother.

Ans. As near as I can recollect it was in the spring of 1854.

Cross-int. 5. State, as nearly as you can from recollection, when he returned.

Ans. As near as I can recollect it was within three months of the time of his departure.

Cross-int. 6. When did Geo. N. Davis first occupy chambers 144 Congress street, and when did he cease to do so?

210 Ans. As near as I can recollect it was in the fall or winter of 1853 that he went in there; he occupied those about nine months.

Cross-int. 7. Where did he then go?

Ans. He moved down stairs for a short time; I should say six months, and then removed to store No. 152 and 154 Congress street.

Cross-int. 8. When did you become salesman for that concern?

Ans. I was never salesman for that concern.

Cross-int. 9. Were the syringes which you say were like Exhibit G received in the store before or after Mr. Haskins returned from Europe?

Ans. I do not recollect.

Direct examination resumed.

By A. F. Badger, esq., counsel for defendant:

Int. 1. State all the places occupied by Geo. N. Davis or Geo. N. Davis & Brother as places of business, while you were in their employ, in the order in which they were occupied.

Ans. No. 25 Doane st., 13 Doane st., 144 Congress st., 146 Congress st., 152 and 154 Congress st.

Int. 2. State whether or not you saw a rubber syringe, or part of a syringe, known as the Davidson syringe, while you were in the employ of Geo. N. Davis.

Ans. I did.

Int. 3. State when for the first time to the best of your recollection, and describe the same.

Ans. To the best of my recollection it was in 1855, or early in 1856. The syringe was somewhat similar to Exhibit G, with metallic trimmings; somewhat more of an oval shape than the Exhibit G.

JOHN H. DOYLE.

(The counsel for the parties here agree, at the request of the counsel for defendants, that the time for closing the testimony be postponed to the 20th of May, 1866, with the understanding that the complainant's motion for hearing at the May session of this court shall not be prejudiced by his having consented to this postponement.)

211 *Deposition of Frederick M. Shepard, taken, subscribed, and sworn to before R. E. Stillwell, U. S. Com'r.*

NEW YORK, *May 15th*, 1866.

Int. 1. What is your name, age, residence, and occupation?

Ans. Frederick M. Shepard; thirty-eight years of age; reside in city of New York; and am in the India-rubber goods business.

Int. 2. Were you ever connected with the Union Rubber Company of New York? and if yea, in what capacity? When did your connection with it begin, and how long continue?

Ans. I was secretary of the company from February 1st, 1853, until February 1st, 1857.

Int. 3. Were all of the goods manufactured by that company, while you were so employed, entered upon their books?

Ans. Yes.

Int. 4. State whether or not you have recently made an examination of the books of said Union Rubber Company for the years 1852 and 1853.

Ans. Yes.

Int. 5. State whether or not you found on said books any charges of work done or of goods made for Charles H. Davidson, of Charlestown, Mass., and Herman E. Davidson, of Gloucester, Mass., or either of them; and if yea, what was the date of the first charge found therein?

(Objected to.)

Ans. Yes. The date of the first charge was August 9th, 1853.

Int. 6. Will you produce said books, and read therefrom the charge mentioned in answer to last interrogatory?

Ans. I have not the control of the books at the present time, and cannot produce them without the consent of the officers.

Int. 7. Will you try to obtain said books, and bring them here at your earliest opportunity?

Ans. Yes, if required.

Int. 8. Who was your immediate predecessor as secretary of said Union Company?

Ans. Nicholas Williamson, now dead.

Int. 9. State whether or not you have made examination of
212 the letter books and files of letters of said Union Rubber Company, or caused the same to be done, in reference to any work or correspondence with either of the said Davidsons for the years 1852 and '53; and if yea, with what result?

(Objected to.)

Ans. I've not made any. I requested the clerk in the office to do so. He told me that he had found none.

(Answer objected to.)

Int. 10. Please to state the name of that clerk, and where, if you know, he may be found.

(Objected to.)

Ans. His name is William Haddon; he is to be found at 12 Park Place, the office of the company.

Int. 11. State whether or not said Union Company did any work for Charles H. and Herman E. Davidson, or either of them, while you were secretary of said Union Company; and if yea, state when it was and what it was, in the order of its occurrence, to the best of your recollection.

Ans. Yes; on the 9th of August, '53, or about that time, and afterwards, in the year 1854, to the best of my recollection. It was the rubber for syringes, the bulb and tubes being in one piece.

Int. 12. State, if you know, where the moulds for such rubber syringes were obtained by the said company.

Ans. Well, I am not certain. They might have been received from the Davidsons, or they might have been made by persons employed by the company.

Int. 13. How many such rubber syringes, to the best of your recol-

lection, were made by said company for said Davidson, while you were secretary?

Ans. I am unable to state precisely; according to my best recollection, one hundred or more.

Int. 14. State whether or not they were all made about the same time.

(Objected to.)

Ans. Yes, they were.

Int. 15. State any circumstance, within your knowledge, connected with the first manufacture of said rubber syringes by said company.

Ans. They were manufactured for the Davidsons; but for some reason I don't now recollect, they didn't take a considerable portion of them. The company tried to save themselves from loss the
213 best way they could, and tried to make complete syringes of some of them, and did fit them up as syringes.

Int. 16. State what was necessary to fit them up as syringes; and what became of those so fitted up.

Ans. The metal trimmings and boxer; those fitted up were sold, or offered for sale.

Int. 17. State more in detail what was necessary to fit them up as syringes.

Ans. The metal boxes and valves at the ends of the rubber tubes, and the metal pipes.

Int. 18. State when, to the best of your recollection, these instruments were so fitted up and sold, or offered for sale.

Ans. 1854, and perhaps some also in 1855.

Int. 19. How many were so fitted up, to the best of your recollection?

Ans. I am unable so say the exact number—enough to justify the expense of getting up metals and boxes. I have no recollection as to the exact quantity—more than a hundred I should say.

Int. 20. About how many so fitted up, to the best of your recollection, were disposed of in the year 1854?

Ans. Well, I think the largest part of those we fitted up was in 1854, and were probably sold about that time.

Int. 21. Look at defendant's "Exhibit G," and state when and where, for the first time, you saw an instrument substantially like it.

(Objected to.)

Ans. Well, I saw an instrument like it in the year 1853; I think it was at the office of the Union Company.

Int. 22. State, if you know, where it was obtained, and who was the manufacturer.

(Objected to.)

Ans. The gentleman who had it told me he obtained it in Europe, and the name of the makers were Ratie & Guballe.

Int. 23. State whether or not there was any mark or name upon the instrument referred to in the last answer, indicating the maker. And if so, what was it?

Ans. I do not recollect of any.

214 *Cross-examined.*

By J. E. Maynadier, esq.:

Cross-int. 24. Will not the books of the Union Company show the number of syringe rubbers made for the Davidsons, or either of them?

Ans. Perhaps not; they will only show such lots as were charged to them.

Cross-int. 25. Will those books show the number of syringe rubbers which the Union Company fitted up, and the number of syringes which they sold, and when they sold them?

Ans. Well, no, probably not; it would be difficult to distinguish them from other syringes the company were then manufacturing.

Cross-int. 26. Were any memoranda of any kind kept by that company relating to work of an experimental nature, done for various parties?

Ans. None, except the charges on their books for such work or articles.

Cross-int. 27. But I understand from your first cross-answer that such work was not always charged on their books. Is this so?

Ans. Such work or the articles were always charged when delivered or sent. We sent some goods to the Davidsons, some of which they did not take; part was returned to us. More of the same sort might have been made about the same time, which were not charged to them on the books, before we discovered that they would not take those which had been sent.

Cross-int. 28. Are you able to swear that the Union Rubber Company did not make syringe rubbers, or did not attempt to make them, for the Davidsons, or any one representing them, before August, 1853?

Ans. I have no recollection of any circumstances regarding the making of them, further than I am guided by the books, prior to August, 1853.

Cross-int. 29. Then you are not able to swear that that company did not make syringe rubbers for the Davidsons in 1852, and before February, 1853?

Ans. From my own personal knowledge I know nothing more than I have answered in my previous answer.

215 *Direct examination resumed.*

Int 30. State whether or not any goods manufactured by said rubber company were delivered or sent which were not entered on the books.

Ans. None were delivered, and I think none sent; some might have been sent and returned without appearing on the books.

Int. 31. If any goods were retained by the parties to whom they were sent, would or would not the entry of the same appear upon the books of said company?

Ans. Yes; they would appear on the books.

Int. 32. Do you remember any fact or circumstance, or the fact of a conversation's occurring, which enables you to tell whether the syringe rubber made by the company while you were the secretary, was the first said company ever made?

Ans. So far as I now recollect I believed it to be the first. My recollections are founded on the conversations I had with clerks employed by the company at the time these were making, that is the summer of 1853.

(Mr. Shepard, the witness, appears and produces the books inquired for in the sixth interrogatory, being the same produced by the witness, Hadden.)

Int. 33. State in whose handwriting the letters, of which the press-copies are now produced, are.

Ans. Mine.

Int. 34. State the year in which the letter dated May 25, '3, was written.

Ans. It was written May 25th, 1853.

FREDERICK M. SHEPARD.

216 *Deposition of William Hadden.—Taken, subscribed, and sworn to before R. E. Stillwell, U. S. com'r.*

MAY 15*th*, 1866.

Int. 1. Please state your name, age, residence, and occupation.

Ans. William Haddon; age, 28; residence, Brooklyn, N. Y.; occupation, secretary Union India Rubber Company.

Int. 2. State whether or not you have examined the books, letter-books, and letters of the Union India Rubber Company, in regard to any charges or correspondence with Charles H. Davidson and Herman E. Davidson, or either of them, for work done by said company?

Ans. I have examined the books and the letter-books which we have on hand for the years 1853 and '4, and have searched for letters from either of those parties during the years '52 and '54. I did not search for letters received from them during the year 1853.

Int. 3. State the result of that search.

(Objected to.)

Ans. I found copies of two letters which we wrote to them, and an entry in our ledger, as follows: "Aug. 9th, 1853. C. H. & H. E. Davidson, $21," which is a charge against them.

Int. 4. Is that the first entry you find in the books of said company of any charge to said Davidsons?

Ans. It is.

Int. 5. Will you produce the letter-books, that copies may be made by the commissioner and attached to your deposition?

Ans. I will. (Witness here produces books.)

Int. 6. State whether you've searched for letters from the said Davidson to the Union Company during the years 1852, '3, and '4. If yea, with what result?

Ans. I have examined our files partially for '52, and I believe for

1854—I won't be positive about it—but not for 1853, without finding any letters from them, or either of them.

Int. 7. Have you letters received by said company here during years last inquired of?

Ans. Only during the year 1852.

217 *Cross-examination.*

Cross-int. 8. One of the copies of letters produced is dated "May 25th, 3." Please say in what year it was written?

Ans. In 1853.

Cross-int. 9. What were your reasons for not making search for letters from the Davidsons, or either of them, during the year '53?

Ans. Because letters received during that year, if we have them in our possession at all, are in great disorder.

WILLIAM HADDON.

MAY 25, 3.

Mr. C. H. Davidson, Charlestown, Mass.:

DEAR SIR: Your favor of the 20th inst. is at hand. We do not recollect that any price was fixed on as the positive cost. The price fixed in the bill is as low as we could make any small quantity for; if a large number should be wanted we should be able to get them up some cheaper.

If you will give us an order for a 1,000, we will give you our lowest terms. We are now in such shape, that we should be able to furnish them more expeditiously than before.

Yours, truly,

F. M. SHEPARD, *Tr.*

[Mail.] NEW YORK, *February 12th*, 1853.

Mr. C. H. Davidson, Charleston, Ms.:

DEAR SIR: We sent by Adams & Co. Express, yesterday, a casting from the mould as requested,

218 It is the first one received from the factory, and is slightly imperfect. We expect a better one in a few days, and will forward the same at once.

Yours, &c.,

F. M. SHEPARD,
Sec'y Union India Rubber Co

Cross-examination of F. C. Cross.—Taken, subscribed and sworn to, before R. E. Stilwell, U. S. Com'r, May 15th, 1866.

Cross-int. 1. You state in answer to second interrogatory that you had been to Europe in behalf of complainant, Mr. Lockwood, recently; at whose instance did you go abroad?

Ans. Mr. Lockwood's.

Cross-int. 2. Did you receive instructions from any one what you were to do while abroad? And if so, from whom?

Ans. I received instructions before leaving this country, and by letter, from Mr. Lockwood, that he wanted me to see that the witnesses attended to answer to the interrogatories in a commission to be issued.

Cross-int. 3. Were those instructions in writing, or otherwise?

Ans. In this country they were verbal; those by letter were written.

Cross-int. 4. Have you the letter or letters containing such instructions, or a part thereof? And if yea, will you produce a copy that may be annexed to your deposition?

Ans. I havn't got them now; I destroyed them all with the other mail matter that I received from my family and otherwise. I kept them ten days after I returned.

Cross-int. 5. State fully the instructions, you received orally and by letter from Mr. Lockwood, in regard to your proceedings while abroad.

Ans. I was instructed wholly to ascertain the exact whereabouts of the firms mentioned in the commission; give their places of business or residence to the consul for the United States in Paris, and induce them to attend at the consul's to answer the interrogatories mentioned in the commission. That is the general instruction; I don't remember anything further respecting instructions.

219 Cross-int. 6. Did you have a copy of the interrogatories contained in the commission or any part thereof?

Ans. Yes; I believe I had a copy.

Cross-int. 7. Did you have an interview with the witnesses named in said commission, or either of them, previous to their giving testimony in this case?

(Objected to.)

Ans. I did with one. I saw the others; but couldn't talk to them, because I did not speak French thoroughly.

Cross-int. 8. With whom did you have the interview?

Ans. Mr. Fabriquette.

Cross-int. 9. State what was said and done at any interview you had with Fabriquette, prior to his testifying in this case.

Ans. I saw Mr. Fabriquette before receiving a copy of the interrogatories, and stated that a commission was about to issue from a court in the United States, to take the testimony of his firm regarding the exportation of India-rubber syringes; and I desired, as a favor, that he would furnish all the testimony he might possess on the subject. I asked him what his recollections were as to exporting such syringes for ten or twelve years back. He stated that he would have to consult his books before giving any definite answer, and declined to answer except to the commission.

Cross-int. 10. Did you at any time previous to his testifying, show him a copy of the interrogatories, read to him the same, or any part thereof, or inform him in any other manner what those interrogatories were?

Ans. I did not.

Cross-int. 11. Did you show him any instrument, or describe to him any instrument concerning which the interrogatories inquired?

Ans. I did not describe them, further than India rubber syringes with two flexible tubes. I did not show any.

Cross-int. 12. Did any one in your behalf have interviews with the other witnesses, or any of them mentioned in said commission, before they testified?

Ans. I deputized a French gentleman to ask the other witnesses to attend and answer the interrogatories in the commission, and also to ask them the earliest knowledge they had of an India rubber syringe with two flexible tubes.

220 Cross-int. 13. Did you have an interview with Mr. Fabriquette after you received copies of the interrogatories and before he testified in this case?

Ans. I never saw him after the first interview.

Cross-int. 14. Were you present at the taking of the testimony before the U. S. Consul at Paris, in this case?

Ans. No.

Direct examination resumed.

Int. 15. Please state generally what steps you took to inform yourself when the first flexible bulb syring with two flexible tubes and with valves, was manufactured in Europe; and what was the result.

(Objected to.)

Ans. I visited a number of surgical instrument makers in Liverpool, Manchester, Sheffield, and London, England. I was told by a large number of the makers and dealers in surgical instruments in the aforesaid cities, that their first knowledge of a bulb syringe with two flexible tubes was in 1855, and that they were made by Galante, of Paris. I found none amongst all that I saw that knew of it earlier than that date; some at a later date. I then visited Paris, and asked through an interpreter, the leading surgical instrument makers in Paris the earliest knowledge they had of the manufacture or existence of an India-rubber syringe with bulb, and two flexible tubes, and found none knew it prior to 1855. Both in England and France, all agreed that Galante was the first maker they knew.

(Answer objected to.)

Cross-examination resumed.

Cross-int. 15. (De bene.) Did none of the parties in Europe with whom you conferred have knowledge of the existence of a rubber syringe having the central part elastic, and two flexible tubes, with suitable valves for receiving and injecting fluid, earlier than 1855.

Ans. Yes; a cylinder with two metallic bands, one at each end of the cylinder where the tubes were connected with the cylinder.

Cross-int. 16. (De bene.) What was the earliest knowledge of that instrument, obtained by you from any parties with whom you conferred?

Ans. 1851.

F. C. CROSS.

221 *Deposition of Lewis Feuchtwanger, taken, subscribed, and sworn to before R. E. Stillwell, U. S. Com'r, May 15th, 1866.*

Int. 1. What is your name, age, residence, and occupation?

Ans. Lewis Feuchtwanger; age, 59; residence, New York city; occupation, chemist.

Int. 2. Look at defendant's Exhibit G. State when and where, for the first time, if ever, you saw an instrument like it.

(Objected to.)

Ans. In 1850, in the city of New York. Two places, surely; one place at Fabriquettes fils et Morra, in William street, between Cedar and Liberty; and Frederick Liese's store, then in John street; I think he was in John street; and I saw it afterwards in Europe. I was in Europe at the Universal Exhibition, in 1851, and called frequently at Henry Luer's where I saw it. His store was in Paris, but he had a large display in the exhibition at London. Luer was a celebrated surgical instrument maker of Paris.

Int. 3. State the number you saw in New York in 1850.

Ans. I couldn't state any number, because where I saw them there was a stock on hand for sale.

Cross-examination.

Cross-int. 4. How many of these syringes did you see at Mr. Frederick Liese's? State as nearly as you recollect.

Ans. I couldn't tell how many. Very likely I bought one myself, for I dealt in the article.

Cross-int. 5. How positive are you that you saw more than one at Liese's?

Ans. If I saw any I must have seen a dozen at least, for he displayed at least a dozen there.

Cross-int. 6. Were they exactly like Exhibit G? If not, how did they differ?

Ans. I should think they were exactly like this that I see before me.

222 Cross-int. 7. Do you recollect whether the manufacturer's name was stamped upon them?

Ans. No, I do not; it may have been.

Cross-int. 8. Do you recollect whether anything was stamped upon them, or whether they had any mark upon them of any kind?

Ans. I think there was a kind of impression upon the India rubber bag, but am not quite positive.

Cross-int. 8. How did they compare with Exhibit G's size?

Ans. About the same size.

Cross-int. 10. How did they compare in length with that exhibit?

Ans. My impression is that they were more round, and of a ball shape.

Cross-int. 11. I mean in length, from end of tube to end of tube.

Ans. I couldn't say. I never measured.

Cross-int. 12. Do you recollect clearly enough to testify that you saw any at Liese's shop as long as the one before you (Exhibit G)?

Ans. I never measured any.

Cross-int. 13. Have you forgotten how they looked? I mean the ones you saw in Liese's shop?

Ans. I have not forgotten it.

Cross-int. 14. Then please give us your best recollection, as to how long they were; whether about as long, or about half as long, or about twice as long as Exhibit G.

Ans. My recollection is about same as that I see before me.

Cross-int. 15. How did the others seen by you in the store of Fabriquettes fils et Morra and abroad, differ from those you saw in Mr. Liese's shop.

Ans. I didn't think there was any difference, they were all white rubber.

Cross-int. 16. Did these syringes have a rubber band around the centre of the bulb, like Exhibit G?

Ans. I don't think they did have a band.

Cross-int. 17. Were metal parts, like the metal parts at each end of the bulb in Exhibit G?

Ans. I couldn't recollect it.

Cross-int. 18. Were the rubber tubes fastened to the middle part as in Exhibit G?

223 Ans. I don't know, I presume they must have been.

Cross-int. 19. Did you see these syringes at Liese's shop more than once?

Ans. I saw them frequently. I was a daily visitor there; he was an old friend of mine.

Cross-int. 20. Did Mr. Liese keep them for sale from 1850 till his death?

Ans. That I couldn't say.

Cross-int. 21. Did you see them there occasionally during the years 1850, '51, 52, '53, and '54?

Ans. In 1850 I saw them, but I spent the year 1851 mostly in Europe. In other years I must have seen them occasionally when I was there.

Cross-int. 22. Did Mr. Liese at that time have any other rubber syringes for sale?

Ans. I am positive he had any variety.

Cross-int 23. How many varieties did he have at that sime? State as nearly as you can.

Ans. More than I can say.

Cross-int. 24. Did he have as many as twenty varieties of rubber syringes at that time?

Ans. More than I can say.

Cross-int. 25. Did he have as many as ten varieties of rubber syringes at that time?

Ans. More than I can say; he had several varieties.

Cross-int. 26. As many as five varieties?

Ans. He may have had five.

Cross-int. 27. Do you feel confident that he had as many as three varieties?

Ans. Probably but three.

Cross-int. 28. How many of these three had bulbs, like Exhibit G? I mean the middle piece.

Ans. I think all three varieties must have had them.

Cross-int. 29. Do you recollect seeing in Mr. Liese's shop, during the year 1850, as many as three varieties of rubber syringes with bulbs? and how positive are you in this recollection?

Ans. I can't be positive as to the number of varieties.

224 Cross-int. 30. Are you positive that you saw more than one variety of rubber syringe with bulbs, at that time, in Mr. Liese's shop?

Ans. Almost positive: yes.

Cross-int. 51. Are you almost positive that you saw as many as three varieties of that kind of syringe?—I mean rubber, with bulbs.

Ans. I have answered that three times already.

Cross-int. 32. Please answer definitely once more, so that I may see exactly what you mean.

Ans. Yes, I am, almost.

Cross-int. 33. Are you sure that Fabriquettes fils et Morra had a store in New York in the year 1850?

Ans. Yes, as far as my recollection goes.

Cross-int. 34. Did you ever hear Mr. Liese say from whom he purchased the syringes like Exhibit G?

(Objected to.)

Ans. No.

Cross-int. 35. Do you know whether they were of foreign or domestic manufacture?

Ans. All foreign.

Cross-int. 36. Did he have at that time any rubber syringes with bulbs, which were made in this country?

Ans. I should say not. Most of his goods were foreign; he had a great many goods from Hutchinson, in Sheffield, England.

Cross-int. 37. If I understand you, then, you are positive that you saw at Mr. Liese's shop, in the year 1850, and afterwards, syringes like Exhibit G; and that you are almost positive that at the same time you saw three—as many as three—varieties of rubber syringes with bulbs. Is this correct?

Ans. If you underline the word "almost" it is correct.

Cross-int. 38. In your thirty-fifth cross-answer you testify that the syringes like Exhibit G in Liese's shop were all foreign; please state how you know this.

Ans. I suppose I took it for granted because I saw them in Europe.

Cross-int. 39. Then you saw them in Europe before you saw them in Mr. Liese's shop?

Ans. In 1850 I was in New York, and in 1851 I was in Europe; therefore your question falls to the ground. I saw them in Liese's shop first.

225 *Direct examination resumed.*

Int. 40. Did you deal in syringes in 1850?

Ans. I couldn't say I was dealing in them, but I received orders sometimes for them.

Int. 41. What was your business in 1850?

Ans. I was a chemist and dealt in drugs.

LEWIS FEUCHTWANGER.

Deposition of Thomas T. Green, taken, subscribed, and sworn to before R. E. Stilwell, U. S. Com'r, May 15th, 1866.

Int. 1. What is your name, age, residence, and occupation?

Ans. Thomas T. Green; age, fifty; residence, New York; occupation, druggist. I have been engaged in drug business thirty-three years.

Int. 2. Look at Exhibit G, and state when and where you first saw an instrument like it.

(Objected to.)

Ans. Brought to my store, corner Broadway and Walker streets, over thirteen years and a half ago; I can't say how much longer ago than that, but I am positive that long; and it was prior to that I know, but I won't say how much prior. I moved to the corner of Broadway and 14th street ten years ago last November; my family lived in Walker street for three years previous to that. I fix the date from that fact.

THOMAS T. GREEN.

Deposition of Hermann Liese, taken, subscribed, and sworn to before R. E. Stilwell, U. S. Com'r., May 16th, 1866.

Int. 1. What is your name, age, residence, and occupation?

Ans. Hermann Liese; thirty years of age; reside at 105 East Seventeeth street, New York; and am a clerk for H. Hernstein

226 & Son.

Int. 2. Were you ever in the employ of Frederick Liese, late of New York, now deceased, and if yea, state when you entered his employ, and how long did you continue in it?

Ans. I was; I entered his employ sometime in July, 1854, and continued with him till the 14th day of November, 1861, when he died.

Int. 3. Look at Exhibit G, and state when and where, for the first time, you saw an instrument like it.

Ans. To the best of my knowledge it was in the store when I came there; but I am positive that I saw it in 1855.

Int 4. In what store?

Ans. In the store of Mr. Frederick Liese, 102 John street, New York.

Int. 5. State the number of these instruments, to the best of your recollection, you saw in 1854.

(Objected to.)

Ans. Well, it was very few, anyhow; probably not more than half a dozen—it may not have been more than three—I can't tell.

Int. 6. State any circumstances which enable you to fix the date of your first knowledge of instruments like Exhibit G.

Ans. The best way I can state is, I had conversation with Mr. Oelzner about these syringes when he came to our store as a clerk, in the spring of 1855. I have also had conversations about these syringes with Mr. F. M. Shepard, President of some hard rubber Co., I think, in the year 1859 or '60, when he, Shepard, came to our store to get some information about a patent which a certain Mr. Davidson got on a similar syringe or instrument to Exhibit G; when he was told, not alone by me, but by the other employees of the store, that we could not conceive how Mr. Davidson could get a patent, as we had imported these syringes, or similar ones, from England and France, long before the time of the date of his patent. Mr. Shepard intended to get up a syringe similar to Davidson's and wanted to get information about it, so as not to get himself into trouble.

Int. 7. State whether or not you made any use of syringes like Exhibit G, in any way, when you first went to Frederick Liese's store.

Ans. I made no personal use of it, except to try them or play with them sometimes, to see how far they would throw water.

Int. 8. State whether or not Charles E. Prescott was in the
227 employment of said Liese when you first went there; and if yea, in what capacity?

Ans. He was in the employ of Mr. Liese in the capacity of bookkeeper.

Int. 9. State whether or not he acted as salesman in the years 1854 and '5.

Ans. He acted as salesman for a short time in the spring of 1855; he also was in the habit of selling goods, but on very rare occasions.

Iut. 10. State, if you know, who made out the orders for foreign goods for said Liese during the year 1854.

Ans. My uncle, Mr. Frederick Liese, and his son, F. C. Liese.

Int. 11. State whether said Prescott made any orders for foreign goods during the year 1854.

(Objected to.)

Ans. He did not.

Int, 12. Were you acquainted with F. C. Liese, son of Frederick Liese? and if yea, how long did you know him?

Ans. I was, for some twenty years. I first saw him in Germany in 1842, to the best of my knowledge. He stayed in Germany three years, and he returned to New York. I saw him again on the 29th June, 1854, in New York, and have seen him almost every day with the exception of a very few days till his death. He died in the summer of 1865.

Int. 13. State whether said F. C. Liese went to Europe after his first return to New York in 1845 or '6; and if so, when?

Ans. I think he went to Europe again in 1849.

Int. 14. State, if you know, for what purpose he visited Europe in 1849, how long he remained there, and what he did while there.

(Objected to.)

Ans. He went there to learn the making and selling of surgical instruments. He remained there, I believe, for two or three years. He was in the employ of Mr. A. Luer, instrument maker in Paris.

Cross-examination.

Cross-int. 15. How distinct is your recollection of instruments like Exdibit G being in Mr. Liese's store, when you first went there in July, 1854?

228 Ans. To the best of my knowledge, I saw them when I first went there.

Cross-int. 16. Please read your seventh answer, and state as nearly as you can, when you so used those syringes.

Ans. Possibly in 1854, but certainly in 1855.

Cross-int. 17. Do you recollect whether Mr. Liese had in his store two kinds of syringes, of the same general construction as Exhibit G? If so, can you describe these two kinds?

Ans. He did have two kinds. One was almost identical with the Exhibit G, while the other, an English article, was made out of what appeared to me to be a piece of heavy India rubber tubing, like a cylinder. The ends were closed with either wood or metal, or both combined, and the suction and delivery pipes were fastened to the mountings of the cylinder.

Cross-int. 18. How does the syringe now shown you, marked "Exhibit 23, R. E. S., U. S, Examiner," compare with the syringe you have just described?

Ans. The general appearance is the same; but it differs in the color of the rubber, and the mountings are different.

Cross-int. 19. Please state, as fully as you recollect, what the conversation was with Mr. Oelzner, referred to in your sixth answer.

Ans. The conversation occurred on a remark he made that we, at that time, did not keep any of Dr. Mattson's syringes, of which he (Oelzner) had sold a great many while he was with Kruger & Co., in Day street; and that he thought it strange that we did not keep any but a few important ones.

HERMANN LIESE.

Deposition of George E. Shiels, taken, subscribed and sworn to before R. E. Stilwell, U. S. Com'r., May 16th, 1866.

Int. 1. What is your name, age, residence, and occupation?

Ans. George E. Shiels; age, thirty-eight; residence, 406 W. Twenty-third street; apothecary.

229 Int. 2. Look at Exhibit G. State when and where you first saw an instrument like it.

(Objected to.)

Ans. I saw them in the years 1849, '50, at Mr. John Milhau's drug store, 183 Broadway.

Int. 3. How do you fix the date? State fully.

Ans. By its being the expiration of my apprenticeship, in 1850.

Int. 4. Have you consulted any book or memoranda made by you at or about that time to enable you to fix the date of the expiration of said apprenticeship? and if so, what and when?

Ans. Yes; this morning I consulted the time of entering Mr. Milhau's store, which was in 1864, and I left in 1850.

Int. 5. Were such instruments for sale at Milhau's while you were there?

Ans. Yes, sir.

Int. 6. About how many, to the best of your recollection, did you see at Milhau's, of instruments, like Exhibit G, while you were there?

Ans. A quarter of a dozen at least.

Int. 7. State, if you know, where Mr. Milhau obtained them.

Ans. At Mr. Frederick Liese's, I believe, he being the only importer of syringes at that date to my knowledge.

Cross-examination.

Cross-int. 8. Were these quarter of a dozen syringes all like each other?

Ans. Yes, sir.

Cross-int. 9. Are you at all certain that Mr. Milhau had no more than three while you were with him?

Ans. Not more than three at one time; he usually bought small lots, and replaced them as they were sold.

Cross-int. 10. You say you went there in 1846. How soon after you went there did Mr. Milhau get his first syringe of that kind or first lot of such syringes?

Ans. On the third or fourth year; as I had nothing to do with selling the goods during the first two years.

Cross-int. 11. When you first began to sell, did you find such syringes in Mr. Milhau's stock of goods?

230 Ans. I have no particular recollection about that.

Cross-int. 12. What other kinds of syringes did Mr. Milhau have for sale prior to your leaving him?

Ans. He had the English style Maws, and the French in tin boxes; self injecting, and various others.

Cross-int. 13. Were these syringes, I mean the quarter of a dozen, exactly like Exhibit G? If not, state minutely how they differed.

Ans. I think they were similar.

Cross-int. 14. Can you point out any difference whatever?

Ans. No, sir.

Cross-int. 15. What did you do immediately after you left Mr. Milhau.

Ans. I went to Yucatan in Mexico.

Cross-int. 16. Did M. Milhau have any other rubber syringe in his shop, before you left, similar to the quarter of a dozen?

Ans. He had others of the same.

Cross-int. 17. Did he have any other variety of syringes similar to that quarter of a dozen?

Ans. I cannot tell.

Cross-int. 18. Do you recollect any mark or lettering upon these syringes—I mean like the quarter of a dozen?

Ans. I don't remember having paid any attention to it, though the word "Brevete" is generally placed on such instruments.

Cross-int. 19. Do you recollect whether those syringes differed in size from the Exhibit G?

Ans. If at all they may have been a little larger; the bulb may have been a little larger.

Cross-int. 20. How did they compare in length with Exhibit G? I mean from end to end, pipes and all.

Ans. About the same.

Cross-int. 21. Do you recollect how the suction ends of those syringes compared with that of Exhibit G?

Ans. No, sir.

Cross int. 22. What was the color of those syringes? How did that compare with Exhibit G?

Ans. White; and about the same.

231 Cross-int. 23. What metal was used in the mounting of those syringes? and how did they compare with Exhibit G?

Ans. The metal was either yellow or reddish; I can't fix exactly.

Cross-int. 24. How long did you remain in Yucatan?

Ans. About nine months.

Cross-int. 25. From there where did you go?

Ans. I came to New York by way of Mobile.

Cross-int. 26. What did you do in New York?

Ans. Engaged in dentistry in Brooklyn.

Cross-int. 27. How long were you so engaged in Brooklyn?

Ans. About a year.

Cross-int. 28. Will you tell us, as exactly as possible, the date when you ceased working as a dentist in Brooklyn?

Ans. In 1853; in the summer.

Cross-int. 29. What did you do next?

Ans. Engaged in a drug store as clerk for six months, and then purchased it.

Cross-int. 30. Where was this store?

Ans. At 372 6th avenue, where I now am.

Cross-int. 31. Have you been engaged there ever since?

Ans. Yes, sir.

Cross-int. 32. When was the last time you recollect seeing any of the syringes in Mr. Malhau's store, before 1850, like Exhibit G?

Ans. I can't fix the time, but saw them before leaving the store.

Cross-int. 33. How often have you seen any of those syringes—I mean those in Milhau's store before '50—since you left that store?

Ans. I never went there since.

Cross-int. 34. Why did you leave that store?

Ans. Because my agreement expired when I left.

Cross-int. 35. Did you have any trouble with Mr. Milhau, or any body interested in that store?

Ans. Not the least.

Cross-int. 36. Your testimony, then, as to the syringes in Mr. Mil-

hau's store in 1850, like G, is based upon recollection merely; is it not?

Ans. Yes, sir; same as all other goods.

Cross-int. 37. Do you now sell rubber syringes of any kind? If so, of whose manufacture?

232 Ans. Davidson's, Goodyear's, Lewis's. I have some others; but I can't call to mind the name.

Cross-int. 38. I understand you to say that you have not seen the syringes like Exhibit G which Mr. Milhau had, since you left Mr. Milhau's store? Is this correct?

Ans. Not seen the ones in his store.

Cross-int. 39. Now are you willing to swear that you see no differences between Exhibit G and the syringes Mr. Milhau had in his store before 1850?

Ans. None in its adaptation.

Cross-int. 40. Are you willing to swear to any differences of any kind?

Ans. None, excepting those I have mentioned previously—the size of the bulb and the color of metal.

Cross-int. 41. Are you willing to swear that you now have such a distinct recollection of the syringes in Mr. Milhau's store, before 1850, that you can state positively that these differences were the only ones.

Ans. I then made no particular examination of the syringes. I am willing to swear that in general appearance and shape they were the same.

Cross-int. 42. Did you ever use or try any of those syringes in Mr. Milhau's store before 1854?

Ans. I never used them. I may have squeezed them dry, but never with water.

Cross-int. 43. What kind of valves did those syringes have, and where were the valves located?

Ans. I made no examination of them then.

Cross-int. 44. Can you swear that those syringes had any valves?

Ans. I presume they had. I never opened the syringe. I don't know. I suppose I cannot swear exactly, not having examined them.

Cross-int. 45. You have seen many syringes like Exhibit G, in general appearance and shape, since you left Mr. Milhau's store, have you not?

Ans. Yes.

233 *Direct examination resumed.*

Int. 46. Have you ever seen a syringe of the general appearance and shape of Exhibit G without valves?

Ans. No, sir.

Int. 47. Look at Exhibit J and state whether or not that is the French syringe referred to in your twelfth cross-interrogatory.

A. No, sir.

Int. 48. State whether or not you had in Milhau's store at that time syringes like Exhibit J for sale.

Ans. Yes, sir. GEORGE E. SHIELS.

Deposition of Henry A. Hall.—Taken, subscribed, and sworn to before Warren Winslow, jr., U. S. Com'r, May 9th, 1866.—Direct examination

By A. F. Badger, esq., counsel for defendants:

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is Henry A. Hall; my age is thirty-eight; residence, Bridgewater, Mass., and carry on business in Boston; I am a dealer rubber goods.

Int. 2. Were you ever in the employ of Geo. N. Davis, of Boston; if yea, in what capacity, when did you enter, and how long did you continue in his employment?

Ans. I was in his employ as salesman, but can't give the year now; I think in 1853 and 1854; I was in his employ about two years, I think.

Int. 3. Have you any books or memoranda which would enable you to fix the date of your entry or leaving his employ?

Ans. I think I have.

Int. 4. Will you please consult those, and at some future day give us the dates of your entry and leaving the employ of said Davis?

Ans. I will.

Witness upon re-appearing states: I find my data are all
234 destroyed or lost, and cannot fix the dates with any more certainty than I have.

Int. 5. Look at Exhibit G, and state when and where for the first time, if at all, you saw instruments like it, to the best of your recollection.

Ans. I think I saw them at J. W. Norcross & Co.'s first, and afterwards at Geo. N. Davis's. I think I saw them during the time I was at Davis's—I think at Norcross's; it may have been at D. P. Ives's. I remember of seeing them a long time ago. It was about the time I was at Davis's—in fact, while I was there, that I saw them first.

Int. 6. Fix the date as nearly as you can from recollection, when you first saw them, and the number which you then saw.

Ans. Well, I will say one; if you refer to the lot of Davis's it might have been a dozen or two that we received there. I can't fix the date, except that it was in the year 1853; I can't give the part of it. I know I was there at the time that Farrar was.

Int. 7. About how long did you remain with Davis after Farrar came there?

Ans. About one year; that's my impression.

Int. 8. How long previous to your leaving there was it that you saw syringes like Exhibit G?

Ans. My impression is that it was somewhere from six to nine months.

Int. 9. State, if you know, where Davis obtained his syringes like Exhibit G.

(Objected to.)

Ans. I understood they came from France—from Paris, I think.

Int. 10. Look at Exhibit J, and state when and where, if at all, you first saw instruments like it.

Ans. I think I saw that at Davis's the same time—about the same time I saw the other; that's my impression.

Int. 11. Did Davis have rubber syringes differing from Exhibits G and J, while you were in his employ? If so, describe them.

Ans. I don't recollect.

Upon further thought the witness states: I recollect now, we had other rubber syringes. I remember one with an upright bulb that he kept at the time, like Exhibit E, in general appearance, that is, having an upright bulb; then there was the Union bulb syringe; they were a bag syringe.

Adjourned to Friday, May 18th.

FRIDAY, *May 18th.*

235 *Cross-examination.*

By Causten Browne, esq., on part of complainant:

Cross-int. 1. In the absence of any books or memoranda which would enable you to fix the date of your leaving the employment of George N. Davis, can you, from recollection, state within six months when you left his employment?

Ans. Well, I should set it in 1855; it was the end, the last day of the year.

Cross-int. 2. Are you able to say from recollection whether it was at the end of 1855, or at the end of 1856, that you left his employment?

Ans. I cannot.

Cross-int. 3. Where was J. W. Norcross & Co.'s place, at which you first saw the syringes which have been spoken of as like Exhibits G?

Ans. It was 31 Milk street, I think—between Morton Place and Hawley street.

Cross-int. 4. Where was the place of D. P. Ives, at which you think it may have been that you first saw them?

Ans. On Kilby street, near Milk.

Cross-Int. 5. Was D. P. Ives the name of the concern?

Ans. I don't know; he was in the concern. I rather think it was Weeks & Ives at that time; I can't tell.

Cross-int. 6. Have you dealt in syringes at all since leaving George N. Davis's?

Ans. Yes.

Cross-int. Whose make?

Ans. Davidson's, Union Rubber Company's, Lewis's American Hard Rubber Company's, and Morey and Smith's.

Cross-int. 8. You have not had any occasion, have you, to call to mind these syringes which George N. Davis had since you were with him? I mean the particulars of their construction.

Ans. Only in the Davidson syringe.

Cross-int. 9. You remember the fact that the syringe at George N. Davis's, referred to as like Exhibit G, operated by compressing and releasing a rubber sack; is your recollection clear so far as that?

236 Ans. Perfectly.

Cross-int. 10. Is your recollection clear that syringes, that so operated by compressing and releasing rubber sacks, had two tubes, and not one only?

Ans. I think it had two.

Cross-int. 11. Is your recollection of the detail of the construction of those instruments so clear as to enable you to swear now that both of the tubes in those instruments were flexible tubes, and not one flexible and one rigid?

Ans. I think they were like this, Exhibit G. I can't swear to anything so far back as that; that is, the construction.

Cross-int. 12. Is your recollection of the details of those instruments so clear as to enable you to swear what was the shape of the elastic sack more than that it was one which was compressed to force the liquid out and released to draw the liquid in, and which you grasped with the hand for that purpose?

Ans. It seems to me it was precisely the same as this instrument here, Exhibit G; that's my impression.

Cross-int. 13. Do you remember any other syringes that Davis had for sale while you were there having two flexible tubes, and which operated by grasping and releasing an elastic chamber in the middle, besides those like Exhibit J, and those which it is your impression were like Exhibit G?

Ans. I think he had some like Exhibit C. I can't swear to it, but I think he had.

Cross-int. 14. Are you able to swear at this length of time that the elastic chambers of the syringes which George N. Davis had, which you have spoken of as like Exhibit G, were not in form and construction like that of Exhibit D, now shown to you?

Ans. Certainly, I will swear to that, because this thing I always remembered; in fact I had them offered to me in New York, at the time we had them, at much less price than they cost us—that impressed it on my mind.

Cross-int. 15. Which did you have offered you at this time in New York?

Ans. In appearance like Exhibit G.

Cross-int. 16. Who offered them to you?

237 Ans. I don't know the parties; some fancy goods house on Moiden Lane. I saw them in the window, and went in and priced them.

Cross-int. 17. Was that when you were with Davis, or after you left him?

Ans. While I was with him.

Cross-int. 18. Can't you give us some further description of that concern in Maiden Lane, so that we can identify them?

Ans. Not unless I were in New York; and if the same store is there now, I think I could find it. The fact is, they kept elastic stockings, and other things of that kind, and I found they had beat us in price. It was between Nassau and Williams streets.

Cross-int. 19. On which side of the street, the north side or south side?

Ans. North; left going from Broadway.

Cross-int. 20. Do you remember the name of any maker, or other stamp, on these syringes at Davis's, which you say were like Exhibit G?

Ans. No.

Cross-int. 21. Have you ever seen an imported syringe of that construction, from the time you left Davis until you were called upon as a witness in this case?

Ans. Can't say they were imported. I have seen a great many that resembled them in appearance.

Cross-int. 22. They were of the make of the various American manufacturers you mentioned awhile ago, were they not?

Ans. Oh, no. I have seen them very similar to that. I have seen no American manufacture, or that I supposed were so, with brass tips like those. I have seen them on exhibition, about in the windows, &c.

Cross-int. 23. Have you seen them at various times since you left George N. Davis?

Ans. I should think I had.

Direct examination resumed.

By A. F. Badger, on part of defendants:

Int. 1. Were you in the employ of George N. Davis at the time Abel F. Farrar came into his employ for the first time?

Ans. I was in his employ at the time of Abel F. Farrar's coming there, in Congress street.

H. A. HALL.

238 *Deposition of Benjamin S. Codman, taken, subscribed, and sworn to, before Winslow Warren, jr., U. S. Com'r, May 18th, 1856.—Direct examination.*

By A. F. Badger, esq., counsel for defendants:

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is Benjamin S. Codman; my age is forty-nine, my residence, Boston, Mass.; doing business 13 Tremont street, I am now a dealer in dental and surgical instruments. I graduated in medicine, and subsequently operated as a dentist sixteen years, then gave up that and commenced my present business July 13, 1852.

Int. 2. Look at Exhibit G, and state when and where, for the first time, you saw an instrument like it.

Ans. It would be rather difficult to know exactly the first time, but remember that I received a consignment of goods from the house of C. Kruger & Co., of New York, and among that invoice I find three French syringes, which was sent as samples. They were composed of a rubber bulb and tubes each. There were three sizes, and three different prices attached; one was seventy-five cents, a dollar, and a dollar and a quarter. There was but one each, sent as samples to

order more by. The date of that invoice was April 7, 1853. The invoice was sent to me in Boston; probably I got it the 8th of April, or not later than the 9th.

Int. 3. State whether or not those instruments, or either of them, were like Exhibit G, in general appearance and form.

(Objected to as leading.)

Ans. Yes; they all had rubber bulbs, and I think one had two flexible tubes, and the others had, I think, two hard tubes; for instance, suppose the bulb to be like Exhibit G, there was a hard tube attached to one end, through which the syringe was filled, also discharged.

Int. 4. Describe the method of operation, in use of the syringe spoken of in your last answer, as having two flexible tubes.

Ans. The bulb was held in the hand, and the air which it contained was discharged by pressure of the hand; the suction end being immersed in fluid, the fluid was drawn up into the bulb when
239 the hand was relaxed, or pressure removed; then by continuing the movements of the hand, the fluid was discharged from the discharge pipe, as occasion required.

Int. 5. What, if anything, prevented the fluid from being forced back through the suction pipe, or the air's being admitted through the delivery pipe?

Ans. There were two valves, as in ordinary air pumps. I didn't dissect thas one particularly, but I have dissected others, as they so frequently get out of repair, that we have to take them apart.

Int. 6. State whether or not you kept in your store, for sale, instruments like Exhibit G, after receiving the first as sample, for a number of years; and if yea, to what extent, and how long, to the best of your recollection.

(Objected as leading.)

Ans. The use of the syringe, at that time, was not so very common as it now is, and I can't recollect, and I haven't examined my books to see if there are others of this kind of syringes received, but think that we ordered a few of them from time to time, and remember distinctly of having some that were imported from France by Messrs Norcross & Towne, of Boston, but can't fix the date without examining my books farther.

Int. 7. State whether or not, any person ever attempted, in any way, to prohibit or restrict you in the sale of such instruments.

Ans. Dr. Mattson undertook to stop my sale of the Lewis syringe, claiming that he had a patent that covered it; that was in 1856.

Int. 8. State whether or not Charles H. Davidson, Herman E. Davidson, and Hamilton D. Lockwood, or either of them, ever attempted to prohibit you from the sale of such syringes.

Ans. Never.

Int. 9. State, if you remember, as to the time when the Davidson syringe was first introduced into the market.

Ans. I couldn't fix the date; but it was subsequent to 1857.

Int. 10. State whether or not, at or about that time, you had any conversation with Charles H. Davidson, of Charlestown, about

syringes; and if yea, give the substance of the conversation, as nearly as you can.

(Objected to.)

Ans. I saw Mr. Davidson from time to time; told him I had examined his syringe, and felt that it would become a very popular
240 syringe, and should like to use my facilities for its successful introduction into general use, all of which I have most faithfully fulfilled, having rarely ever recommended or sold any others, to any very great extent. The tenor of my conversation was always to encourage him. I felt he was a man that needed encouragement. I have given the substance of the conversation.

Int. 11. State whether or not you had conversation with him, about that time, relative to the fact of your having sold an instrument similar to his; and if so, state what that conversation was.

(Objected to.)

Ans. I have no distinct remembrance of ever having alluded to the French syringe.

Cross-examination.

By Causten Browne, esq., on part of complainant:

Cross-int. 1. Do you remember which of the three prices named in the entry in your invoice-book, to which you have referred, was the price of that syringe which you think had two flexible tubes?

Ans. The dollar and a quarter; or fifteen dollars a dozen.

Cross-int. 2. Do you remember that fact, or do you reason that it must have been so, from the circumstance of the syringe having had two flexible tubes?

Ans. I judge the syringe with two tubes to be the most valuable of the three.

Cross-int. 3. Will you read to the commissioner, that he may write them down, the entry referred to, and the two next entries, in the invoice-book?

Ans. I will; they are as follows:

"1 Ea French self injection. 75—1 00—1 25 —— $3 00"
2 50 3 00
"1 " " Glyso poche & gum spring —— 5 50"
"1 " " " " 2 25—2 75 —— 5 00"

Cross-int. 4. Do you remember what were the syringes mentioned in the second and third of these entries?

Ans. I remember nothing distinctly but the "Glyso poche," that was a little round syringe with a hemisphere of rubber screwed on to a metallic bottom, and held in its place by a ring, inside of which was a spiral spring.

241 Cross-int. 5. Was that a French article?

Ans. It was, and manufactured by Their in Paris.

Cross-int. 6. Did you buy from time to time, during the years 1853, 1854, 1855, a good many different forms of imported rubber syringes as samples or otherwise.

Ans. I did buy several varieties.

Cross-int. 7. You say that you think you ordered a few of this kind of syringe from time to time afterwards—meaning the syringe which you think had two tubes, received from Kruger & Co., in 1853. Do you remember how long the first of such purchases was after the receipt of the invoice quoted above from your book?

Ans. I ordered but very few of those, and cannot distinctly remember when, or how many of those with two tubes, but Thier's glyso poche I distinctly remember ordering many dozens.

Cross-int. 8. If you ordered any more afterwards like that covered by the Kruger invoice of April, 1853, (I mean with the two tubes,) did you order them from Kruger & Co.?

Ans. I did, or of Edward Oelzner, he was then the company of Kruger & Company.

Cross-int. 9. Did you make your subsequent purchases of the glyso poche also of Kruger & Co., or of Oelzner?

Ans. I think I did, either of him or may have been, some of Liese, I think all of Kruger & Co. I forget when Oelzner went back to Liese's.

Cross-int. 10. Is the firm of Kruger & Co. still in the business?

Ans. They gave up business as a firm six or eight years ago.

Cross-int. 11. Is the firm of Norcross & Town still in the business?

Ans. They dissolved some six or seven years ago, and the business was carried on by J. W. Norcross & Co.

Cross-int. 12. You have not now in your possession, I suppose, either of the three syringes, called French self-injecting syringes in the Kruger invoice of April, 1853, or any syringe which you afterwards bought; if any, like the one of that date which you think had two tubes?

Ans. I have none, and perhaps for the simple reason that the French rubber was of such poor quality at that time, as to lose their elasticity and become worthless after a year or so, and then we had no means of repairing them in this country.

242 Cross-int. 13. Can you say that you distinctly remember having seen any syringe just like that one which you think had two tubes in the Kruger invoice of 1853, since that time? If so, will you state when and where you saw such fac simile of it?

Ans. I never remember of seeing anything like it until the conversation occurred with Mr. Davidson with regard to his, and then I saw that his differed in several essential particulars from the French.

Cross-int. 14. Will you state the particulars in which you found his to differ from the French?

Objected to.)

Ans. They were in the metallic ends, the form of the bulb and the quality of the rubber.

Cross-int. 15. State, if you please, what information the entry above quoted from the Kruger invoice itself gives as to the construction of the articles mentioned in it. I mean the first one of the three entries mentioned in the book.

Ans. It would give me no idea excepting my memory, which I recollect it to be a French syringe, with an elastic bulb and tubing.

Cross-int. 16. You said in your answer to the third interrogatory, speaking of these three syringes mentioned in the Kruger invoice of 1853, "I think one had two flexible tubes." Is your recollection of the details of the construction of this instrument such that you are able to swear that both these two tubes were flexible, and that one was the induction tube through which the enema was drawn into the sack, and the other the injection tube through which the enema was injected, and that the instrument had valves which enabled these tubes so to operate by the mere compression and release of the sack?

Ans. My remembrance is not distinct enough to enable me to take my oath of that.

Cross-int. 17. Do you remember when the first Mattson syringes, having a rubber bulb and two flexible tubes came into the market?

Ans. I find on my books, July 10, 1854, Mark Worthley credited with half a dozen Mattson syringes. I can probably find earlier enteries on my books of sales of the same syringes; I find some as early as March, 1854. We must understand that these are pump syringes with piston rods, with metallic barrels and flexible tubes.

Cross-int. 18. You stated upon the direct examination that the Davidson syringe was first introduced into the market subse-
243 quent to 1857; you mean, do you not, that that was when you first had them?

Ans. I shouldn't like to testify positively as to the time without refreshing my memory from an examination of my books, which would indicate the exact time; but, as near as I can remember, my first conversation with Mr. Davidson about his new patent syringe was from one to two years before he furnished us with the article for sale.

Cross-int. 19. You have been notified or informed heretofore, have you not, by Mr. Hamilton D. Lockwood, that he claimed all syringes having an elastic bulb and two flexible tubes, with suitable valves, to be an infringement of his patent?

Ans. I have been so verbally informed.

Cross-int. 20. What is the price now to the trade of the Davidson syringe?

Ans. Our price to the public is $2 50 each; wholesale, we have two prices, and that depends upon whether the purchase is a large or small one; $15 00 and $18 00, I think, a dozen.

Direct examination resumed.

By A F. Badger, esq., on part of defendants:

Int. 1. Was Edward Oelzner with Kruger & Co. at the time of the consignment of the first invoice to you?

Ans. He was.

Int. 2. Will you look on page forty-five of your invoice book and state whether you find any entry there of an instrument like the one in the first invoice you received from Kruger & Co.? and if yea, please to read.

(Objected to.)

Ans. I do, under date of August 2d, 1853. It reads as follows: "1 self-injection instrument, $1 25."

Int. 3. Look on page 114 and state whether you find an entry of a rubber syringe; and if yea, read the same; state what the instrument was, and where you obtained it.

Ans. August 22, 1864. George N. Davis, credit by one barrel syphon, and the 23d, three barrels syphons, $2 67 each; these are on page 114. It was a rubber cylinder of about five inches in length, with metallic ends, and a flexible tube from either end, similar to Exhibit D. I obtained it of George N. Davis, of Boston, dealer in rubber goods, they were imported articles.

Int. 4. You state, in answer to the thirteenth cross-interro-
244 gatory, "I never remember seeing anything like it until the conversation occurred with Mr. Davidson." Do you mean to say you never, prior to that conversation, had seen any, except the one referred to in the first invoice from Kruger, or that you had seen only that pattern?

(Objected to.)

Ans. I remember only the one first alluded to as received from Kruger & Co. and the barrel syphon, both of which differ essentially from Davidson's.

Int. 5. You state, in answer to the sixteenth cross-interrogatory, "my remembrance is not distinct enough to enable me to take my oath of that." What is your best recollection of the fact inquired of in that interrogatory?

Ans. I have the impression that it was a syringe of two tubes; but whether that was so, or whether I had my mind on the barrel syphon, I cannot testify under oath.

Int. 6. You speak, in answer to the eighteenth cross-interrogatory, of your first conversation with Mr. Davidson; what was the date of that conversation to the best of your recollection?

Ans. I shouldn't want to state without referring to my books, which would tell definitely. (Upon referring to his books the witness states, by first credit to Davidson was February 28, 1857, and the conversation occurred from one to two years before that.

Int. 7. You state, in answer to the nineteenth cross-interrogatory, that you have been verbally informed that Mr. Lockwood claimed all syringes having an elastic bulb, &c. When were you so first informed?

Ans. Many times, at different intervals; perhaps three years ago; it may be longer, or it may be shorter. I knew that a law suit was pending, and the different parties informed me at different times, but I can't say when.

Int. 8. Look at Exhibit I, and say whether that is the glyso poche referred to in the fourth cross-interrogatory?

Ans. It is.

BENJ. S. CODMAN.

245 *Deposition of Joseph H. Adams, taken, subscribed and sworn to before Winslow Warren, jr., ex'r.—Direct examination.*

MAY, 23*d*, 1866.

By Joel Giles, esq., counsel for defendants:

Int. 1. Please state your name, age, residence and occupation.

Ans. My name is Joseph H. Adams; my age is forty-eight; residence, Roxbury, Mass., and occupation that of solicitor of patents.

Int. 2. State what experience, if any, you have had in examining inventions in respect to their patentability, and in respect to the features in which they were alike or differed from other inventions before and after.

Ans. I have been connected with the examining corps of the Patent Office for the past ten years, and it has been my business to examine into the novelty and patentable features of various inventions, and to decide generally as to their patentability. For some years I have held the position of principal examiner.

Int. 3. Have you testified as an expert in patent cases in courts of the United States?

Ans. I have testified in those courts.

Int. 4. Have you examined what purports to be a copy of a caveat of C. H. and H. E. Davidson for improvement to syringes now shown to you and marked with your initials by the commissioner? Also a certified copy in the Patent Office of a patent granted to C. H. Davidson, assignee of C. H. and H. E. Davidson, for improvement in syringes dated Mach 31, 1857? Also a certified copy from the Patent Office of the re-issue of the said Davidson patent granted to H. D. Lockwood, dated April 25, 1865? and if yea, do you understand the inventions described in said copy of a caveat and in said patents respectively?

Ans. I have examined those papers, and think I understand the inventions described.

Int. 5. Have you examined a syringe marked by a labe card "Exhibit I, R. E. Stilwell, examiner," purporting to be one of the Exhibits of the defendants in this cause? Also a syringe marked "D," purporting to be an exbibit of the defendants in this cause?

246 Also a syringe marked by label card "Exhibit G, R. E. S. examiner," purporting to be one of the exhibits of the defendants in this cause, and if yea, do you understand the construction and operation substantially of said syringes? and if yea, please describe their construction and operation respectively, beginning with Exhibit 1.

Ans. I have examined them and understand their construction and operation. The exhibit I consists of a chamber provided with a bulb on its top, pressed outward by a spring in its interior; it also has an inlet and outlet valve to which are connected pipes. The pressure of the bulb on the chamber causes the fluid to be forced through one pipe, and as it, the bulb, resumes its position eauses the water to be drawn into the chamber through the inlet pipe; the alternate pressure upon the bulb, and releasing the same, will cause the water to be

drawn through the inlet pipe and forced from the outlet pipe by a proper arrangement of valves in the chambers. Flexible tubes are attached to the two projections above the valves, one being for the inlet and the other for the outlet of the fluid. Over the outlet valve is arranged a flexible air chamber for the purpose probably of insuring a steady and regular supply of fluid through the pipes. The pipe at the end of the flexible tube is to be inserted into that part of the body designed to receive the fluid. Exhibit "D" consists of a cylindrical piece of rubber, or some elastic substance, with metal rims or casings at either end. In those casings are valves which are, one an inlet and the other an outlet valve, and extending from each casing is a flexible tube, one intended for an inlet tube and the other for the outlet, the latter provided with a metal tube to be inserted into the part of the body designed to receive the fluid. The fluid is drawn into the inlet tube and forced from the outlet by intermittent pressure upon the cylindrical elastic number; it is not a bulb. Exhibit "G" consists of an elastic chamber enlarged at its centre, and tapering towards either end. On either end of this chamber is a metallic casing within which are placed valves operating respectively as inlet and outlet valves; to the end of each metallic casing is attached a flexible tube, one of which serves as an inlet tube and the other as an outled tube. At the end of the latter is a tube of bone or ivory, to be inserted in that part of the body designed to receive the fluid to be injected. The pressure upon the central chamber
247 forces the water from the outlet tube, and its restoration, by its elasticity, causes the water to be drawn into the inlet tube.

Int. 6. State whether or not you have made, or caused to be made, outline drawings of said Exhibits "I," "D," and "G," indicating where the valves are located in them respectively, also of Exhibit "A," in part; and if yea, please annex the same to your answer, to be marked with your initials by the magistrate, and explain the object of Exhibit A, shown in said drawing, and why there is an apparent break in the drawings of the pipes.

Ans. I have caused outline drawings to be made of these exhibits. I produce it, to be marked and annexed as an exhibit. The object of the exhibit marked "A" is evidently to be attached to the end of the tube shown on Exhibit "G," and designed probably to be used as a vaginal injection tube---evidently intended for it, as it is adapted to it. The tubes are represented as broken in order to enable them to be represented upon one sheet, and designed to represent longer tubes than those shown in the drawings.

Int. 7. Has said exhibit marked "I" an elastic chamber, flexible tubes, and suitable valves, so arranged and organized as to operate as an injection syringe by the intermittent compression and relaxation of the elastic chamber by the hand?

Ans. I should say it had.

Int. 8. Has exhibit marked "D" an elastic chamber, flexibles tubes, and suitable valves so arranged and organized as to operate as an injection syringe by the intermittent compression and relaxation of the chamber by the hand?

Ans. I think it has.

Int. 9. Has exhibit marked "G" an elastic chamber or bulb with flexible tubes and suitable valves so arranged and organized as to operate as an injection syringe by the intermittent compression and relaxation of the chamber or bulb by the hand?

Ans. I think it has.

Int. 10. State whether or not, in your opinion, the said re-issued Davidson patent, granted to Lockwood covers substantially in its description and claim said Exhibit "I" and said Exhibit "D" and said Exhibit "G," or either, and which of them, giving, shortly, your reasons for your opinion.

248 Ans. It appears to substantially cover them all. In each one the end of the inlet tube being inserted in the enema, and the bulb being compressed with the hand, will expel the air from within it through the outlet tube; then by releasing the grasp of the hand the bulb or chamber will recover its form by virtue of its elasticity; a vacuum will thus be formed, and will be filled by the enema. The valvular arrangement on either side of the bulb or chamber is such that, by compressing the said bulb or chamber, its contents will be expelled through one tube, while by the expansion of the bulb, consequent upon its own elasticity, it will be filled with whatever fluid the end of the inlet tube is immersed in.

Int. 11. Would said exhibits, if made after the granting of said re-issued patent be an infringement thereof, in your opinion, as an expert?

Ans. I think they would.

Int. 12. Would said exhibits, if made prior to the invention of the said Davidson's, as claimed in said re-issued patent, anticipate and defeat said patent, in your opinion, as an expert?

Ans. In my opinion, they would.

Int. 13. Look at Exhibit "B," purporting to be one of the exhibits of the defendants in this cause, and state whether or not it is substantially like exhibit marked "I," before referred to.

Ans. It is substantially like it; it looks like a duplicate of it.

Int. 14. Look at exhibit marked "C" and exhibit marked "H," purporting to be exhibits of the defendants in this cause, and state whether or not they are substantially like exhibit marked "D," before referred to.

Ans. They are substantially like that.

Int. 15. Look at exhibit marked "A" and exhibit marked "J," purporting to be exhibits of the defendants in this cause, and state whether or not they are substantially like exhibit marked "G," before referred to.

Ans. They are substantially like the exhibit referred to.

Int. 16. State whether or not, in your opinion, a change of the elastic chamber in Exhibit "D" from the tube form to the bulb form, shown in Exhibit "G," would be an improvement, if any, in that part of the combination claimed in said re-issued patent, and not an improvement in the combination itself.

(Objected to as leading.)

249 Ans. The change would be only in one of the parts, and not in the combination.

Int. 17. State whether or not, in your opinion, the bulb form of the chamber be an improvement upon the cylinder or tube form; and if yea, whether such form alters the combination claimed in said re-issued patent.

(Objected to as leading.)

Ans. I should say that the bulb form was an improvement upon the cylindrical form as more efficient in operation; the change of form would not alter the combination claimed in said re-issue.

Cross-examination.

By Causten Browne, esq., counsel for claimant:

Cross-int. 1. You have described "Exhibit I" as consisting of a chamber provided with a bulb on its top, pressed outward by a spring in its interior. What kind of spring is that?

Ans. It's a spiral metallic spring.

Cross-int. 2. Will you explain a little more fully the manner in which the flexible air chamber making part of this instrument, operates to insure a steady and regular supply of fluid through the pipes?

Ans. It's done by the compression of the air in that chamber as the water is forced through the outlet pipe. The air being compressible, whatever force there is in the water would compress the air in that chamber and allow a larger amount of water to enter that space between the air chamber and the pipe, thereby exerting a steady pressure upon the water. It's a common device in forcing pumps, similar to the operation of the air chamber in forcing pumps.

Cross-int. 3. You speak of Exhibit "D" as consisting of a cylindrical piece of rubber, or some elastic substance with metal rims or casings at either end, in which casings are valves. By the "metal rims or casings" do you mean the metallic pieces which are set upon each end of the rubber cylinder, and are of the same or about the same exterior diameter?

Ans. Those are the casings I referred to.

Cross-int. 4 Does there not proceed from each of these metal casings a metallic tube of about one-third of the diameter of the metallic casing, upon which tubes the inner end of the flexible pipes are drawn?

250 Ans. There does; and I considered it as a part of the metal casing when I spoke of it.

Cross-int. 5. The valves in Exhibit "D" are placed within these metallic tubes which proceed from or make part of the metallic casing, are they not?

Ans. Yes; they are.

Cross-int. 6. Do the valves consist of little balls which play between a valve seat formed in the metallic tube and a metallic bar, which bisects the bore of the tube?

Ans. They appear to.

JOSEPH H. ADAMS.

[The defendants give notice to the complainants that they will put in, and use at the hearing of this cause, a certified copy of the deposition of Hermann E. Davidson and of Moses Babcock, in the interference case between the application of said Hermann E. Davidson and Charles H. Davidson for the original patent sued on, and the application of Alfred C. Garrett in 1857; also the English and French patents, or official copies thereof, referred to in the defendants' answer in this cause, and the certified copies of the file wrapper and included papers in the re-issue case of the patent now sued on.

The complainants give notice to the defendants that they will object to any use at the hearing of this cause of any of the documents above referred to, unless the same are produced and made part of the record before the closing of the proofs under the order of court; and further, that they will object to any use at the hearing of any certified copy of the depositions above mentioned; and further, that they will object at the hearing to any proof of those depositions as the record now stands; and lastly, they will object to any use in evidence of the "included papers" in the above-mentioned file wrapper of the re-issue case.—W. W., JR.]

251 *John Haskins recalled.—Taken, subscribed, and sworn to before Winslow Warren, jr., ex'r, May* 23, 1866.—*Direct examination resumed.*

By A. F. Badger, esq , counsel for defendants :

Int. 1. Have you before testified in this case ?

Ans. I have.

Int. 2. You stated in your previous examination that in June and July, 1854, you were in England, in London, with directions to purchase goods for Geo. N. Davis & Brother, of Boston. State whether or not you purchased, or caused to be purchased, goods for said Davis elsewhere in Europe than in England; and if so, when and where, and what.

Ans. I had a list of goods, various articles, purchased of two or three different concerns in Paris. One of the gentlemen might have been called a broker. I don't know positively that he was. It was the latter part of June or the first of July, 1854, that I was in Paris and purchased those goods. There were various rubber articles, and among them were a few syringes.

Int. 3. Can you give any further description than you have in your last answer of the rubber syringes purchased by or for you in Paris ? If you can, please do so.

Ans. I cannot.

Int. 4. Have you made inquiries in Europe relative to the early manufacture of rubber syringes there ? And if yea, state what you have done, when you did it, and the result.

(Objected to.)

Ans. I wrote to Messrs. Mackintosh & Co. last year, and received their reply. I wrote to Maw & Co., of London, and received their

reply; or rather, I requested them to write to Mr. Thomas Lewis to my care.

Int. 5. State whether or not the letter now shown you was received in reply to either of said letters; and if yea, to which. Produce the same, that it may be annexed to your deposition.

(Objected to.)

Ans. This letter was received in reply, directed to Mr. Thomas Lewis. The same is marked "L, W. W., jr." and annexed hereto.

252 *Cross-examination.*

Cross-int. 1. Do you make rubber work for syringes having an elastic bulb, with two flexible tubes?

(Objected to.)

Ans. We have made some bulbs and tubing; but we always lost money on them. We haven't made a dollar on that kind of work.

Cross-int. 2. Did I ask you whether you had made any money or not on it?

Ans. No, sir; but I thought the truth had better go along with the answer.

Cross-int. 3. For what parties have you done that sort of work?

(Objected to.)

Ans. We have made some for Mr. Thomas Lewis, of Boston.

Cross-int. 4. Do you mean to be understood that you have not done such work for any other parties than him?

(Objected to.)

Ans. I may have sold a few bulbs to other parties; but of no account whatever—not syringe manufacturers.

Cross-int. 5. Who were these one or two other parties?

(Objected to.)

Ans. We have sold a few bulbs occasionally, fifty or so, to Henry Burr, of Boston; that is, at a time. Now and then in the year we would sell him fifty bulbs.

Cross-int. 6. Anybody else?

(Objected to.)

Ans. I don't recollect anybody else.

Cross-int. 7. Is Mr. Burr a syringe manufacturer?

(Objected to.)

Ans. I stated before that I never sold them to any syringe manufacturer, excepting Mr. Lewis. We never did, that I recollect.

Cross-int. 8. Did you ever see one of Mr. Lewis's syringes containing your rubber bulbs and tubes?

(Objected to.)

Ans. I have, and used them.

Cross-int. 9. They are syringes furnished with valves, so that by alternately compressing and relaxing the bulb the fluid is drawn in through one of the rubber tubes and expelled through the other, are they not?

(Objected to.)

Ans. I think it likely.

Cross-int. 10. Don't you know? You say you have used them.

(Objected to.)

253 Ans. I believe they are.

Cross-int. 11. When did you first make such rubber work for Mr. Thomas Lewis? I mean rubber bulbs and tubes such as you have described.

(Objected to.)

Ans. We were experimenting along with them in 1865, made some through the summer of 1865.

Cross-int. 12. Do you mean to say that you did not, earlier than the summer of 1865, make any rubber bulbs and tubes which were sold or delivered to Mr. Lewis?

(Objected to.)

Ans. We made some, but they were not good for anything.

Cross-int. 13. Well, when did you first make for Mr. Lewis rubber bulbs and tubes which were sold to him, whether they were good for anything or not?

(Objected to.)

Ans. We made some in 1864.

Cross-int. 14. How early in 1864?

Objected to.)

Ans. Well, perhaps in the summer of 1864.

Cross-int. 15. Was it perhaps earlier than the summer of 1864?

(Objected to.)

Ans. Once and a while we would make some and then stop a few months; then we would make some again and stop—we had other work.

Cross-int. 16. Please to answer my question. Was it perhaps earlier than the summer of 1864 that you first made rubber bulbs and tubes which were sold to Mr. Thomas Lewis?

Ans. I don't remember it was earlier.

Cross-int. 17. Do you remember that it was not?

(Objected to.)

Ans. I don't remember that it was or it was not.

Cross-int. 18. Can you not say from recollection within six months when you first made rubber bulbs and tubes for Mr. Thomas Lewis?

(Objected to.)

Ans. I cannot.

Cross-int. 19. Can you within twelve months?

(Objected to.)

Ans. I cannot state any more than I have stated about it.

Cross-int. 20. Can you or can you not state from recollection within twelve months when you first made rubber bulbs and tubes for Mr. Thomas Lewis?

(Objected to.)

Ans. I cannot.

254 Cross-int. 21. Please to state your best recollection of the number of rubber bulbs with tubes which you have made and sold to Mr. Lewis from the time you commenced that work for him until to-day.

(Objected to.)

Ans. I can't state anything about it; I don't remember; I don't know anything about it.

Cross-int. 22. Are you willing to say upon oath that that is the best answer you can give to my question?

(Objected to.)

Ans. I can.

Cross-int. 23. You cannot say from recollection whether you have made and sold to Mr. Thomas Lewis more or less than one thousand, can you?

(Objected to.)

Ans. Yes; we have sold more than a thousand.

Cross-int. 24. More than two thousand?

(Objected to.)

Ans. Yes; more than two thousand.

Cross-int. 25. More than three thousand?

(Objected to.)

Ans. Yes, sir; more than three. You might as well go up five thousand at a time, that will save time.

Cross-int. 26. Was it more than ten thousand in all?

(Objected to.)

Ans. Yes, sir.

Cross-int. 27. More than twenty thousand?

(Objected to.)

Ans. Very likely.

Cross-int. 28. Did Mr. Lewis ask you to write to Maw & Co. the letter, a reply to which you have produced?

Ans. He did.

Cross-int. 29. You say you received a reply from Messrs. Mackintosh & Co., where is it?

Ans. I don't know.

Cross-int. 30. What did you do with it after you got it?

Ans. I gave it to Mr. Lewis.

Cross-int. 31. State as nearly as you can when you went aboard and when you returned, on the occasion of the trip in which you made the purchases you have mentioned.

Ans. I left Boston in the steamer America, on the 7th day of June, 1854, Captain Lang. I returned in the Africa and landed at New York the 7th of September, 1854, same year.

255 Cross-int. 32. Were you again in Paris at any time after you returned to this country?

Ans. Never.

Cross-int. 33. Can you describe any of the articles which you bought in Paris in 1854 for George N. Davis?

Ans. I cannot.

JOHN HASKINS.

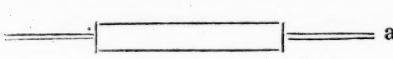
L. W. W, Jr.

11, Aldersgate Street, London, 20 *Nov.* 1865.
E. C.

Mr. Thos. Lewis, Boston, U. S.:

Sir: In reply to your letter of the 4th we can only repeat what we have already written to Messrs. McIntosh, viz: That we have made the syringes for the last 14 years or thereabouts, at any rate ever since the English patent taken out by Mr. Robertson, of Dublin, expired, which we believe was about the year 1851. We have never, so far as we know, exported any direct to the United States, but of course it is possible that some of our make have found their way there through other hands.

We have always made both shapes; i. e., the straight barrel,

 and the ball one

such as you appear to have seen.

We are faithfully, yours,

J. MAW & CO.

256 *Deposition of Charles H. Hovey, taken, subscribed and sworn to before Winslow Warren, Jr., ex'r, May 23d.—Direct examination.*

By A. F. Badger, esq., counsel for defendants:

Int. 1. Please state your name, age, residence and occupation.

Ans. My name is Charles H. Hovey; I am thirty-six; residence, Roxbury; I am United States revenue inspector.

Int. 2. Look at defendants' Exhibit "J," and state when and where you first saw an instrument like it.

(Objected to.)

Ans. We had an instrument like it in principle—ball, valves, and two tubes—in our store, in the store of Joseph T. Brown, 292 Washington street, Boston—I was clerk there—sometime between August 12th and the 1st of December, 1853.

Int. 3. State any circumstance that enables you to fix the date mentioned in your last answer.

Ans. I know that we opened the store on the 12th of August, and that I had charge of the show cases that contained instruments. I fitted up the show cases and filled them—that contained instruments—and we took pains to have all syringes and articles of that kind that were in the market—samples of them at least—and I recollect that in procuring new goods for the show case we got that among the others. After we opened the store, two of the clerks—myself and one other—went to New York to buy goods, and returned before cold weather, before Thanksgiving, because I know another clerk had to take his vacation after that time. Mr. Brown and I and the other

clerk went to New York and purchased them; but I recollect that syringe being in the stock at that time—in that fall.

Int. 4. State whether or not, in general appearance, it was like Exhibit "J."

(Objected to.)

Ans. It was.

Int. 5. About how many such syringes did you have at this time?

Ans. I cannot state.

Int. 6. What was done with them?

Ans. We kept them in the case for sale.

257 *Cross-examination.*

By Causten Browne, esq., counsel for complainant:

Cross-int. 1. I understand you to say that the syringes you speak of were bought in New York. If I am right, will you state from whom they were bought.

Ans. In the first place I don't think I said they were bought in New York. If we did purchase them in New York, we purchased them of Rushton, Clark & Co., or Liese, probably.

Cros-int. 2. Did you buy most of your articles of that class from the house of Frederick Liese at that time?

Ans. We did buy most of our articles, but not all, of that kind; as near as I can recollect, Liese made a speciality of some instruments, didn't keep a general assortment.

Cross-int. 3. Did he keep a general assortment of syringes?

Ans. I should say that he did.

Cross-int. 4. When did you leave J. T. Brown & Co.?

Ans. As near as I can recollect, it was the fall of 1856, but it might have been 1856.

CHAS. H. HOVEY.

Adjourned to May 24, 1866, at 10½ o'clock.

Deposition of Joel Giles, taken, subscribed, and sworn to before Winslow Warren, jr., ex'r., May 24th, 1866. —Direct-examination.

By A. F. Badger, esq., counsel for defendants:

Int. 1. Please state your name, age, residence and occupation.

Ans. My name is Joel Giles; age is sixty two; my domicile at present is in the city of New York, and occupation that of a lawyer.

Int. 2. Have you been retained by the defendants as counsel in this suit?

Ans. I was retained as consulting counsel October 1st, 1865.

Int. 3. State whether or not you have personal knowledge of
258 a rubber syringe having an elastic bulb or chamber, two flexible tubes and suitable valves, so arranged and organized as to operate as an injecting syringe; and if yea, state when and where you first had such knowledge, and the circumstances connected therewith.

(Objected to as leading.)

Ans. I have such knowledge of such syringe, and I believe my first knowledge of such a syringe was at my room in Cambridge, Massachusetts, where I was sick with a rheumatic fever, in the latter part of October, 1851, between the 11th of October and the 24th of October of that year. I was first confined to my room on the 11th of October before named, having been more or less ill from the 20th of the preceeding September, when I caught the cold that resulted in the fever. My attendant physician was Dr. Morrill Wyman of Cambridge; he prescribed certain medicines, the technical name of which I do not recollect, to be taken once in four hours, and if medicine did not operate, to be repeated once in two hours. The medicine did not operate, and I suffered from the stoppage of the bowels for three successive days, when I became satisfied that I was in imminent danger from that cause, and I mentioned the fact to some person, whom I do not recollect, that I must have relief or I could not live. It was suggested by some person in the room, whom I do not recollect, that I had better try an injection of warm water, and a syringe for that purpose was brought into my chamber; and upon my observing that I never had taken an injection, some one, whom I do not recollect, observed that I need have no delicacy about it as I could administer it myself. Before bedtime I was satisfied by my feelings that the stoppage was probably at the outlet of the stomach, too remote to be reached by an injection, and I determined to repeat the medicine once in two hours until lt did operate. I did so and got relief from the operation of the medicine in the evening of the fourth day from the time of this stoppage. The relief was instantaneous and decided, and it was apparent how great the danger was that I had been in. Some days after, when I was well enough to do so, though my fever was still progressing and had not reached its crisis, I examined this syringe for the purpose of understanding its construction and operation, as a matter of information and in case I should wish to use it afterward. It was in a flat box about ten inches long, two and a half or three in width, and of an inch and a half or two inches deep according to my best recollection. It appeared to be made of India
259 rubber cured by some process; in color similar to what is called the white or buff rubber. It had a central bulb in shape and about the size of a large hen's egg and an elastic tube, apparently of the same material, attached to each end of the longest axis of the bulb by some kind of coupling of different material. The tubes were from ten to fifteen inches in length, according to my best recollection; one was terminated by a pipe, apparently to receive the fluid, and the other by a pipe fitted for injecting the fluid. The pipes were also of a different material from the tubes, and, according to the best of my recollection, were metallic of a light color, but I do not remember, and probably did not then know what the metal was.

I examined the syringe sufficiently to satisfy my mind of its construction and operation, and that it had some kind of suitable valves in the couplings between the tubes and the bulb, and operated by intermittent compression and relaxation of the hand. The instrument appeared new and of finished workmanship. I did not take it

apart and I did not see the valves, but I supposed then, and do now, that it contained an inlet and outlet valve of some kind. I saw no external means of operating it if it had not such valves. I replaced the instrument in the box or case, and it remained in my room some ten days or a fortnight, when, not having used it or expecting to use it, I requested my attendant to see that it was returned where it came from.

Int. 3. State whether or not you have endeavored to find the syringe described in your last answer, or to obtain information concerning the same; and if yea, state what you have done, and the result.

Ans. I have endeavored to find the syringe referred to. I have not suceeded in doing so. I supposed that Dr. Wyman might have owned this syringe, or knew who did own it at the time, and I addressed him a letter inquiring if he had such a syringe at that time, and sent it to my room; or if he knew who did furnish the syringe, or could he put me in the way of ascertaining, describing the syringe that I saw in my room, and examined substantially as I have in my previous answer, so far as to enable him at once to know what I was in pursuit of. He replied to me by a letter, which I now produce and identify with my initials, which letter is dated January 29th, 1866; which letter I retained until a few days prior to the 19th of April, 1866, and then returned it to Dr. Wyman, informing him that testimony had been taken in Paris in this case tending to show
260 that the syringe spoken of in his letter as having been seen by him in 1853, at Luer's shop in Paris was not on sale there, meaning in Paris, and not at the shop, until 1854 or 1855, and requesting him to consult his papers and fix the date when he saw the syringe referred to in his letter at Luer's shop in Paris; and also to consult his books and fix the date of his attendance on me while sick with rheumatic fever at Mrs. Munroe's in Cambridge; and if he remained of the same recollection in regard to the syringe seen by him in Paris, to return his letter to me and state whether he would be examined as a witness in this cause at a time convenient to him. I heard nothing from him until Monday evening of this week, when his letter, enclosing his original letter returned to me, his letter being written on the back of it, and dated April 19th, 1866, was handed to me by Mr. Woodbury, who stated he found it shoved under the door of his vacant office, No 40, in this buildlng, Studio Building, which room I ocupied for several weeks last winter. I here produce and annex the letter dated January 29, 1866, and also the one on the back of it, dated April 19, 1866, (the same are hereto annexed, marked "M. W. W. Jr." and "N. W. W. Jr."). For further answer I will state that I endeavored to find the young man who attended me usually from six to seven in the morning until nine or ten in the evening during my sickness, for the purpose of ascertaining whether he had any knowledge of the syringe inquired about. I did not succeed in seeing him myself, but I procured a friend in Cambridge to see him and inquire if he had any recollection of a syringe in my room; and I was informed (objected to) that the young man recollected that there was a syringe there; but that he did not examine it and did not know its construction or operation.

(Counsel for the complainant seasonably objecting to the statements of the contents of the witness's letter to Dr. Wyman, makes no objection to the use in evidence of Dr. Wyman's letters to the witness in the stead of Dr. Wyman's deposition, here agreeing that Dr. Wyman if produced as a witness, would testify substantially as stated by him in his said letters.)

Int. 4. State any other facts that enable you to fix the date of seeing the instrument at your room in Cambridge, and described by you.

Ans. The books which I kept of my professional business, at that time, are at present in my native town, some forty miles in the interior; also the docket of my cases at that time. In my books
261 were the last entries made before my confinement, and other entries, showing when I began practice after my illness, and the docket shows the cases I was engaged in at the time of my illness. I have frequently seen the dates, and am as certain as I can be of anything in the past that it was in the last half of October, 1851, when I examined this syringe at my room, as before stated. The docket of the Circuit Court also shows the trial of the patent suit of in Howe *vs.* Bradford in June and July, 1852, which was the first trial court I was able to engage in after my illness, which was on the docket of the previous October; and Mr. Howe was anxious to have it tried at the October term, 1851, and came from New York to my room in Cambridge to see whether it would be possible for me to take part in the trial with Mr. Choate, at that time; and I informed him that it was not, and that from my experience of the same fever which I had had several years before, I did not expect to resume labor before the next spring or summer, and if he could not wait he must get other counsel. I remember this case well, as Mr. Choate, my leading counsel, was, at the time it was reached to be tried, in New York, and the opposing counsel, A. L. Jordan, formerly attorney general of New York, and Charles M. Keller, of New York, and A. B. Ely, of Boston, were unwilling to delay the case for Mr. Choate's return, and I opened it to the jury for the plaintiff, occupying nearly the whole of the first day of the trial, when I was scarcely able to stand up from the effects of the fever of the previous winter. Mr. Choate came in the second day, and the trial proceeded to conclusion. There are many other circumstances and dates which I have seen since my sickness that leave no doubt whatever in my mind of the correctness of the date. I have stated when I saw and examined the syringe inquired about at my room, as I have before stated. I will add that I had watchers during my illnes, from the 24th of October to the 4th of November, 1851, and their names are entered in the almanac of that year, against the days they watched, the almanac belonging to a friend of mine in Cambridge, who procured the watchers for me. I examined this syringe, as before stated, before I had watchers and while I was able to use my limbs.

Int. 5. State whether or not you have communicated your knowledge of the instrument before described to the complainant in this case or his attorney; and if yea, state when.

262 Ans. I have communicated the fact that I had knowledge of such a syringe to the plaintiff and to his counsel, Mr. Browne; first to Mr. Browne, in New York; the exact time I do not recollect. It was at the St. James Hotel, in New York, where we met; and after asking him how far back he expected to prove the invention of a syringe by the Davidsons, to which he replied "not much before the middle of 1852," upon which I stated that my testimony would then be material. I had also seen a copy of the Davidsons' caveat furnished by the complainants to the defendants, dated in January, 1853; and I had been informed by Mr. Badger that he understood the caveat was filed in the first part of January, 1853, the copy furnished not showing when it was filed. I communicated this information to the counsel for the plaintiff as soon as I learned from him and the caveat the probable date of the Davidsons' invention. Before I had learned that date I had supposed it to be quite probable that the syringe examined by me, as before stated, might have been one of the earliest of the Davidsons' make.

Int. 6. State whether or not the syringe described by you was substantially like either of the defendants' Exhibits G and J in construction and general appearance.

Ans. I would say that I do not profess to be an expert, and do not wish to be examined as such. As to the general appearance of the syringe examined by me, as compared to the exhibits referred to in the question, the syringe examined by me was in all respects smaller than these exhibits. I do not recollect any band round the centre of the bulb, nor any letters or name on the bulb; and with the other exceptions as to the color of the metallic mountings, the syringe examined by me was in appearance like the exhibits referred to.

Cross-examination.

By Causten Browne, esq., counsel for complainant.

Cross-int. 1. Who is the Mr. Ramsay mentioned in Dr. Wyman's letter of January 29, 1866?

Ans. He is an apothecary in Old Cambridge, near the colleges, of whom I procured the medicines ordered by Dr. Wyman, and who had been in that business there for many years, and remains there still.

Cross-int. 2. Does the Mrs. Munroe, with whom you boarded during your illness, still keep a boarding house in the same place? If not, where is she, if living?

263 Ans. She is not living. She was an aged lady at the time I was sick in her house, and died soon after I left her house to come into Boston, and before I was able to attend her funeral, the weather being bad.

Cross-int. 3. What is the name and residence of the young man you have mentioned as having watched with you during the day?

Ans. His surname was Pickett; his Christian name, I think, was George, but am not certain. He then resided in Cambridge; and I

was informed, when I tried to find him, that he was there this spring, engaged more or less with a Mr. Woods, a grocer opposite the Law School, on whom I called, and by whom I was informed that Pickett was employed by him more or less in his store, but was not there then.

Cross-int. 4. Who was the person who had the interview with this young man at your request?

Ans. William G. Stearns, esq., the steward of the university, whose office is in the bank opposite the law school.

Cross-int. 5. Can you give the name of any person who attended you as nurse or servant between the 11th and 24th of October, 1851?

Ans. I hired young Pickett to attend me during the day soon after I was confined to my room, and until I was able to leave it. I had no female nurse other than Mrs. Munroe, who aided me much beyond her ability and against my remonstrance, believing her to be too old and too feeble to assist the sick; but she was very kind and very attentive while I remained at her house. Many friends called on me during the time specified in the question, and while with me afforded me any assistance of any kind I needed and which they could render. Among them was Professor Greenleaf, since deceased; Mr. Stearns, before referred to; Mr. Jonas Wyeth, now living in Cambridge; Mr. James Munroe, son of Mrs. Munroe, since deceased; Mr. Whitney—William A., I think, and a brother of his, both still living in Cambridge, I suppose; and Rev. Mr. Watson Munroe, son of Mrs. Munroe, who was at home most of the time during my illness at his mother's house, and was very attentive and kind to me, whom I have inquired for recently, but was not able to learn his present residence. Mr. C. C. Foster, now living in Cambridge, visited me nearly every day, after he was informed of my illness, which, I think, was a little after the time specified in the question. There were many others who called, but whose names I cannot now
264 state as having called within the time stated, many of whom have since deceased, and some have moved away; but I have no reason to suppose that they had knowledge of the syringe, excepting my physician, Dr. Wyman, and my male nurse, Mr. Pickett, Mr. Ramsay, the apothecary, from whom I suppose it possible it may have come, and Mr. Foster, who had a son a physician, at that time living in Roxbury, and Rev. Mr. Watson, who was much in my room; of all of these I have inquired, or procured others to inquire, except Rev. Mr. Watson, whom I could not find, with the result stated in my previous answers.

J. GILES.

(J. G.)—M, W. W., JR.

CAMBRIDGE, *January* 29, 1866.

Joel Giles, esq., 35 Studio Building, Boston.

MY DEAR SIR: I am sorry I cannot aid you with my recollection as to the injecting apparatus in 1851. I remember perfectly seeing a

similar apparatus for injecting blood into the veins in Luer's shop, in Paris, in 1853; it had two elastic tubes, with a bulb between with two valves. I worked it at the time and am confident of its construction.

If this can be of any value I shall be glad. I enquired of Mr. Ramsay about the earliest time he had the syringe for sale, but could get nothing satisfactory.

Truly, yours,

M. WYMAN.

265 N, W. W., JR.

CAMBRIDGE, 19 *April*, 1866.

J. GILES, Esq.,

MY DEAR SIR: I looked over my bill of surgical instruments bought of Luer at the time mentioned, and find it dated 5 July, 1853. It was when I was selecting these instruments that Luer showed me the instrument mentioned within.

Truly yours,

M. WYMAN.

My attendance on you was in Oct., Nov., and Dec., 1851.

The defendants here produce a certified copy of the correspondence with the Patent Office, relating to the reissue of the patent granted C. H. & H. E. Davidson for an improved syringe, and annex it hereto; the same is marked by the Commissioner "O, W W Jr."

Adjourned until May 29th at 12.

Deposition of William P. Jones, taken, subscribed, and sworn to before Winslow Warren, jr., Ex'r, May 29, 1866.

Direct examination.

By A. F. Badger, esq., counsel for defendants:

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is William P. Jones; age, thirty-three; residence, 141 Concord street, Boston; occupation, paper dealer.

Int. 2. Are you familiar with a rubber syringe having an elastic bulb, two flexible tubes so organized as to operate as an injection syringe?

(Objected to.)

266 Ans. Well, sir, I sold them formerly; I was with Kelley & Levin, No. 5 Kilby street, Boston, fancy goods dealers. I was with them from 1st February, 1848, to the 10th March, 1858; while in their employ, after about 1850, I used to sell goods in the store, and occasionally I used to travel with samples through New England, when business was dull.

Int. 3. Describe the instruments which you say you sold, and state when you first saw them, to the best of your recollection.

Ans. I have sold instruments of this description—Exhibit J—and of this mark—H. G.—about 1852 or 1853, I should think; it was so far back, I couldn't tell you any earlier date. Two or three years after that, I think, a man by the name of Essex, I think from Fall River, came along with a syringe similar to Exhibit J, without these marks upon it, called Davidson's syringe, I think. Then we used to sell those about that time, after he came along, because we could get them on better terms, bartering them.

Int. 4. State how you are able to fix the date of 1852 or 1853, when you say you sold syringes like Exhibit J?

Ans. Well, the only way that I can fix it in my own mind is, that just before that I had commenced to sell goods, and these, with another article called the rubber nipple, we were selling largely at that time; I mean the rubber nipple was selling largely at that time, and these syringes we had then.

Int. 5. State if you know where said syringes were obtained.

Ans. We imported them from France.

Int. 6. State whether or not any person ever attempted to prohibit you from selling such instruments?

Ans. No, sir.

Cross-examination

By Causten Browne, esq., counsel for complainant:

Cross-int. 1. Is the firm of Kelley & Levin still in existence?

Ans. No, sir.

Cross-int. 2. When did it wind up?

Ans. I don't know whether it was in March, 1859, or March, 1860, that they suspended.

Cross-int. 3. Where are their invoice books?

267 Ans. They are kept in the possession of Kelley & Edmands, I think. I think they purchased the books.

Cross-int. 4. Where is the place of business of Kelley & Edmands?

Ans. 156 Washington street.

Cross-int. 5. What business do they do?

Ans. Importing druggists' fancy articles, importers of fancy goods,

Cross-int. 6. Were they the successors of Kelley & Levin?

Ans. They were. They purchased the whole stock after they failed.

Cross-int. 7. What was the name of the shipping house on the other side by whom the syringes you have spoken of, as being of the same description as Exhibit J, were invoiced and forwarded to you?

Ans. Well, there were two or three different commission houses we used to get our goods through, one Enock & Oppenheim; another was Jules Glendsay, and there were two other parties whose names I forget.

Cross-int. 8. Are you connected with the concern of Kelley & Edmands?

Ans. No, sir.

Cross-int. 9. Do you know whether the invoice books of Kelley & Levin are now in the hands of Kelley & Edmands or not?

Ans. I think they are.

Cross-int. 10. When did you last see them in their possession?

Ans. The last time I saw them in their possession, just after they suspended, I was called upon by the assignee, Mr. James H. Weeks, to take an account of the stock; the books were there. I saw the invoice books at that time in their possession. I mean in Kelley & Levin's.

Cross-int. 11. What I mean is, when did you last see them in the possession of Kelley & Edmands?

Ans. I have never seen them in their possession.

Cross-int. 12. Have you ever seen them in their place of business?

Ans. No, sir.

Cross-int. 13. Have you ever seen them in the possession or in the place of business of either Mr. Kelley or Mr. Edmands, of the firm of Kelley & Edmands?

Ans. I have not, sir.

Cross-int. 14. How do you know that the invoice books of
268 Kelley & Levin are kept in possession of Kelley & Edmands, as you say you think is the case in answer to the third cross-interrogatory?

Ans. I know that they purchased them of the assignee, being told so by Mr. Kelley.

Cross-int. 15. When were you told so?

Ans. Just after the co-partnership of Kelley & Edmands was formed.

Cross-int. 16. When did you last see anywhere, or in anybody's possession, the invoice books of Kelley & Levin?

Ans. Yesterday afternoon.

Cross-int. 17. In whose possession were they then?

Ans. In Mr. Badger's.

Cross-int. 18. Do you know how Mr. Badger got them?

Ans. He told me Mr. Edwards loaned it to him; this was the foreign invoice book.

Cross-int. 19. Didn't you borrow them for Mr. Badger?

Ans. No, sir.

Cross-int. 20. Didn't you have anything to do with procuring them to be loaned to Mr. Badger?

Ans. No, sir.

Cross-int. 21. Did you not get them from the possession or place of business of Kelley & Edmands, and take them to Mr. Badger?

Ans. No, sir.

Cross-int. 22. Did you not get them from the possession or place of business of Kelley & Edmands, for some purpose, shortly before they were furnished to Mr. Badger?

Ans. No, sir.

Cross-int. 53. Do you mean to be understood that between the time that you took an account of the stock of Kelley & Levin, and

the time you saw these invoice books in Mr. Badger's possession, yesterday, you did not see them?

Ans. Yes, sir.

Cross-int. 24. Did you know, or have any reason to think, until you saw them in Mr. Badger's possession, that they were to be put in his possession?

Ans. No, sir.

269 (Counsel for the complainant declines to proceed further with the examination until the invoice books are produced, and until so produced objects to the resumption of the direct examination.)

Direct examination resumed.

Re-direct int. 1. State whether or not you had charge of the books of Kelley & Levin at any time you were employed by them, and if yea, state generally their method of entering invoices of foreign goods upon their invoice book.

(Objected to.)

Ans. I had charge of their books, but not of their invoice book. I know that all invoices we received were not always entered upon the foreign invoice book, as we had duplicate invoices, and marked the cost of the goods from the duplicate.

Re-direct int. 2. State whether or not, in your examination of the invoice book of Kelley & Levin with me at your place of business yesterday, you saw in the said book anything which aided you in fixing the date of your first sale of syringes like Exhibit J, and if yea, state what.

(Objected to.)

Ans. No, sir.

Re-direct int. 3. State whether or not you found in said invoice book any entry of rubber syringes.

(Objected to.)

Ans. No, sir.

(The invoice book is here produced.)

Cross-examination resumed.—(De bene esse.)

Cross-int. 25. Was it a uniform practice with Kelley & Levin to receive duplicate invoices of their French importations?

Ans. It was.

Direct examination resumed.

Re-direct int. 4. State whether or not you find in the invoice book of Kelly & Levin, periods of time of considerable length, during which there is no entry of invoices of foreign goods.

(Objected to.)

270 Ans. In looking over the invoice yesterday, I noticed that there were some seasons of the year where we were receiving

goods by sailing vessels and by steamer, spaces of quite a time elapsing where there is no entry.

WM. P. JONES.

(Counsel for defendants here introduces certified copies of the depositions of H. E. Davidson and Moses Babcock, in the interference between Garrett and Davidson, appealed March 10, 1857. The same are hereto annexed, marked "P, W. W., Jr.")

Adjourned till 3 o'clock, p. m.

William P. Jones re-appeared.—Cross-examination resumed.

Cross-int. 26. You spoke in your direct examination of certain articles called rubber nipples, which Kelley & Levin sold largely—were those imported articles?

Ans. They were.

Cross-int. 27. Will you look at the invoice book above produced by you, and state under what date you find the first invoice of those nipples?

Ans. April, 1858, is the earliest that I can find here.

WM. P. JONES.

271 *Exhibit for defendants.—O. W. W. Jr.—The U. States Patent Office.*

To all persons to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy from the records of this office of the letters rejecting the application for the re-issue of the patent granted C. H. & H. E. Davidson for an improved syringe.

In testimony whereof, I, D. P. Holloway, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this 1st day of May, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty .

[SEAL.] D. P. HOLLOWAY.

U. S. PATENT OFFICE, *April 1st*, 1865.

SIR: The specification and drawing for the re-issue of Davidson's patent for a syringe are herewith returned for amendment. The record of this case shows that Davidson's original claim was twice rejected upon the patent of Pearshall & Gilbert of 1833, and that upon an abandonment of this claim and the substitution of a very limited claim, the present patent was granted. That upon this limited claim an interference was declared with the application of A. C. Garratt for a similar invention, and priority of invention awarded to Davidson, for the following reason:

"Elastic sacks, flexible tubes and valves of all kinds being separately of common application in syringes and pumps; nothing short of the whole combination indicated above can be considered here as

the point at issue, and the evidence in this respect for Garratt does not go back prior to his application."

It is not in the power of this office now to renew, or widen this issue, nor to admit any proceedings incompatible with a decision thus deliberately made.

272 It must be evident that after the rendition of this decision no such amendment as that now proposed could have been admitted under Davidson's application, and such privilege cannot be acquired under an application for a re-issue.

The present opinion of the office is, that unless the statement of invention, the description and claim be so amended as to conform to the patent, the application for the re-issue must be refused.

Respectfully yours,

D. P. HOLLOWAY, *Comm'r.*

H. D. LOCKWOOD.
Care J. B. Crosby, Boston, Mass.

U. S. PATENT OFFICE, *April 8th*, 1865.

SIR: The office has fully considered your argument in relation to the re-issue of Davidson's patent for a syringe and is still of opinion that the claim cannot now be widened beyond that originally accepted. The office would not have regarded it as a patentable invention on your part merely to have attached rubber tubes to Pearshall & Gilbert's syringe, for flexible tubes were in use for other forms of syringe before your invention. The purpose of Pearshall & Gilbert's syringe was the same as yours, and the effect of such a claim as that now set up would be to award you a patent for the attachment of rubber tubes to their syringe.

The office is willing to consider the arrangement of the flexible bag in line with the tubes as a patentable improvement; but beyond that does not admit invention of a patentable character, in view of Pearshall & Gilbert's patent and the state of the art at the time of your alleged invention. With these, and the reasons expressed in the official communication of the 1st inst, the office must refuse to re-issue as prayed for.

Respectfully yours,

D. P. HOLLOWAY, *Comm'r.*

H. D. LOCKWOOD.
Care J. B. Crosby, Boston, Mass.

273 P., W. W. JR.

THE UNITED STATES PATENT OFFICE:

To all to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy from the files of this office of the testimony of H. E. Davidson and Moses Babcock in re, the interference between Garrett and Davidson, appealed March 10th, 1857.

In testimony whereof, I, T. C. Theaker, Commissioner of Patents,

have caused the seal of the Patent office to be hereunto affixed this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninetieth.

[SEAL.] T. C. THEAKER.

Moses Babcock, being duly sworn, doth depose and say, in answer to interrogatories proposed to him by Joseph W. Hubbard, esquire, counsel for Charles H. Davidson, the assignee of Herman E. and Charles H. Davidson, as follows, viz:

Int. 1. Please state your age, residence, and business.

Ans. My age is forty-nine. I reside in Charlestown, Massachusetts. My occupation, rifle maker.

Int. 2. Please state what you know, if anything, in regard to a syringe of novel construction, invented by C. H. and H. E. Davidson.

Ans. In 1853 I had a shop in Charlestown square. Mr. C. H. Davidson had a shop in Medford street, in Charlestown. In 1853 I saw a syringe of the kind, with the exhibit mentioned in Mr. Davidson's deposition, at Mr. C. H. Davidson's shop. He said he wanted a man to turn the metallic parts. I knew of a man of the name of Fuller who was used to the turning business, and I sent him to Mr. Davidson, who hired him. That syringe I saw was precisely
274 like the said exhibit. I could not tell what part of 1853 this was. I should think it was the forepart of the fall. The next I knew of it was in February or March, 1855. I then saw Mr. Davidson and a man of the name of Bridges at Mr. Patte's shop on Webster street, Charlestown, casting moulds to make the rubber part in. I knew nothing more about it until December, 1855; Mr. Davidson then came to my place, I should think, about the middle of December, and said he wanted to go on with his syringe. I told him I was alone in the shop, and had plenty of room and tools, and he might go to work there if he wished. He went to work, and has been there ever since. He often spoke of getting a patent, and told me he had applied for one.

MOSES BABCOCK.

Dr. Herman E. Davidson, being duly sworn, doth depose and say, in answer to interrogatories proposed to him by Josiah W. Hubbard, esquire, counsel for Charles H. Davidson, the assignee of Herman E. and Charles H. Davidson, as follows, viz:

Int. 1. What is your name, residence, and occupation?

Ans. My name is Herman E. Davidson; my residence is at Gloucester, Massachusetts; my occupation, that of a physician.

Int. 2. Where did you reside in the fall of 1852? and what was your occupation?

Ans. I then resided in Gloucester, in Massachusetts, and my occupation was that of a physician.

Int. 3. Please state what you know, if anything, in regard to a syringe of novel construction, for which letters patent have been applied for by Herman E. Davidson and Charles H. Davidson. Please state, if you know, by whom the invention was made and when; also,

please describe the said syringe, and state what was done, if any thing, to perfect said invention, and to adapt the same to actual use

Ans. In the fall and winter of 1852 I was attending a patient with a cancer at the mouth of the womb. I thought vaginal injections advisable. I knew of no instrument suitable for this purpose.
275 The most convenient instrument was a simple India rubber bag, with a single tube. In the employment of this instrument it is necessary to remove the tube in order to re-fill the instrument when the injection is used. This occasioned pain and inconvenience. In conferring with my brother, Charles H. Davidson, he suggested that an instrument might be constructed with two tubes of India rubber attached to one side of an India rubber sack; these tubes to be provided with valves, so arranged in the tubes that by alternate compression and expansion of the sack, any amount of fluid for injection might be delivered without removing the tube from the passage. After some consideration of this suggestion, it occurred to me that a little different form would make the instrument better suited for the use designed. I thought that by having the sack constructed of an oval form, and the tubes proceeding from the extremities of the oval, in the direction of the longer axis, it could be better grasped by the hand, and the injection more effectually delivered. This suggestion was approved by my brother, and was the form that we adopted for the instrument. I produce a drawing which I made and sent to my brother in the latter part of November, 1852, I think. He then resided in Charlestown. [This drawing is annexed, and marked by the magistrate "A. W. R."] From that time a correspondence upon this subject commenced between me and my brother. That correspondence my brother has retained in his possession, and has it now. I think it was in the latter part of December, 1852, that my brother commenced work upon the instrument. I visited New York, in the latter part of December, for the purpose of ascertaining whether we could get the India rubber parts made there, and to make inquiries in relation to moulds, the materials of which they were required to be constructed, and the form. From that time until the time my brother left for California, which I think was in June, 1853, the business of constructing and perfecting the instrument was left to him. I had no active participation in it from December, 1852, until the time he left. At the time he left for California, he conveyed to me his interest in the instrument. I produce a description which was made and sent to my brother at the same time with the drawing marked A. (This is annexed to this deposition, and marked by the magistrate "B. W. R.)" After my brother's interest had been conveyed to me, I entered into an agreement with S. F. Leach, of Boston, who,
in consideration of receiving one half of the profits to be de-
276 rived from the sale of the instrument, agreed to have the instrument manufactured, and to attend to the manufacturing. A correspondence took place between Mr. Leach and myself upon this subject. He seemed to be occupied with endeavors to get the India-rubber parts made, and did not meet with success.

(Mr. Browne, counsel for A. C. Garratt, objects to the last state-

ment as being derived from Mr. Leach's correspondence, as suggested by the witness.)

(Mr. Hubbard, counsel for Mr. Davidson, claims that the above testimony is competent, on the ground that it has a tendency to show a continued effort on the witness's part to reduce his invention to actual use.)

I next endeavored to get some one to take Leach's interest, and manufacture the instrument. I think this was in the early part of 1854. I applied to Dr. Joseph Reynolds, of Concord, Massachusetts, and inquired of him whether he would like to take an interest in the instrument. A correspondence then ensued between Dr. Reynolds and myself. He finally concluded not to go into it. The matter rested there until my brother's return, which I think was in the winter of 1854. At that time, as he had no occupation, I advised him to take hold of this business again himself. He expressed a willingness to do so, but had not the means to undertake it at that time. He received an offer from a friend to go into business with him, and engaged in business with that friend. After that business proved unsuccessful, he concluded to take hold of the syringe again. I think this was in the winter of 1855, but cannot remember. My brother made some alterations in the size of the instrument. He made the bulb smaller and separate from the India rubber pipes. He made an alteration in the valves. The instrument, as it was first made, in the early part of 1853, consisted of the following: An India rubber bag or sack, of an oblong spheroidal form, extending in the direction of its longitudinal axis; two India rubber tubes, cast in one piece with the sack. The extremities of the tubes were provided with valve-boxes. One of the valve boxes was provided with an anal pipe. One of the valves was for induction and the other for ejection. I produce a syringe as an illustration of the one so first made in 1853. It is marked "C. H. & H. E. Davidson, Charlestown, Mass. Caveat filed Jan. 8, 1853." It is a correct model or representation of the one so first made; it is in the precise form of it. The syringe which was afterwards made is precisely like that filed in the Patent Office with the application for a patent.

277 Int. 4. Please state whether not, in the course of your practice, you have used a syringe, or known of one being used, similar to the exhibit produced by you; and if so, when and where.

Ans. I have known of its being used in my own family by the patient for whom it was originally designed, in the early part of March, 1853, I think, in Gloucester.

Int. 5. Please state when the first instrument was made like the exhibit produced by you, if you know?

Ans. I do not know.

Int. State as near as you can.

Ans. I think some time in the early part of February, 1853.

Int. 7. Please state whether or not the form of the sack was so made from design; and if so, for what purpose.

Ans. It was so made from design; because it was better adapted to be grasped by the hand, and more completely freed of its contents by the grasp of the hand.

Int. 8. Please state whether or not the size of the sack was reduced for any particular purpose. If so, what was the object?

Ans. The size of the sack was reduced, in order to enable a person with a small hand to grasp it more conveniently. It was adapted to the use of females. It would also recover its form more promptly than a larger sack.

Int. 9. Please state whether or not you obtained any knowledge or information in regard to the conception of this syringe from any person except your brother. If so, from whom, and what did you learn?

Ans. All that I had ever seen before was the simple India rubber sack, which I spoke of before. I never saw a sack with India rubber tubes leading from it until I got this up. That was an idea of my own, without any suggestion except from my brother.

Int. 10. Can you state whether or not the first instrument of which you have spoken operated successfully?

Ans. It did.

Int. 11. Will you please state whether or not there was a design in arranging tubes in an axial line with the sack. If so, please state what that design was.

Ans. I think not, except that it struck me as the most convenient form, and the fluid would travel in a more direct course than
278 in a different form. There would also be a greater facility for cleaning the instrument.

Int. 12. Please state whether or not you or your brother employed any person to assist in making the first instrument. If so, whom?

Ans. Mr. D. H. Smith, the foreman in his machine shop, was employed upon the moulds.

Int. 13. Please state, as near as you can, how make syringes like the exhibit were completed in the winter of 1852-3.

Ans. I cannot remember how many. I should say there were six. The great difficulty was in getting the India rubber parts, and therefore there were but few made.

And in answer to cross-interrogatories propounded to him by Causten Browne, esquire, counsel for A. C. Garrett, as follows, viz:

Cross-int. 1. What part of the first-named syringe did you invent?

Ans. The form of the syringe. The oval form, with the tubes proceeding from the extremities.

Cross-int. 2. What part did your brother invent?

Ans. The criginal suggestion, from which I derived the form.

Cross-int. 3. Djd he suggest that a syringe could be made out of an India rubber bag, with tubes leading out of it for the induction and ejection of the fluid?

Ans. That is what he suggested.

Cross-int. 4. Are you the H. E. Davidson who made this application for a patent jointly with C. H. Davidson?

Ans. I am.

Cross-int. 5. What has become of your interest therein?

Ans. I have assigned it to my brother, C. H. Davidson.

Cross-int. 6. In writing? and if yea, will you produce the writing?

Ans. It was. I produce it. It is recorded at the Patent Office in Liber F[4], page 121, of transfers of patents.

Cross-int. 7. What consideration did you receive for that assignment?

Ans. The sum of two thousand dollars.

Cross-int. 8. Will you swear that that sum of money was paid to you by C. H. Davidson, or any one in his behalf, and is in-
279 tended by you to be retained by you as your own, whatever be the result of this interference?

Ans. I do.

Cross-int. 9. Was it paid in cash? If not, how?

Ans. It was not paid in cash. He released demands against me.

Cross-int. 10. How were these demands originally incurred?

Ans. In the sale of a machine which was left by him in my possession on his leaving for California. I sold the machine for him, and owed him the proceeds.

HERMAN E. DAVIDSON.

Additional testimony for complainant.—Direct examination.

Taken, subscribed, and sworn to, before N. Austin Parks, examiner, May 19th, 1866.

H. E. Davidson recalled.

By Causten Browne, esq., counsel for complainant:

Int. 1. Did ever you know a man by the name of Abel J. Farrar?

Ans. No, sir.

Int. 2. Did you ever have any conversation with any man of the name of Farrar, upon the subject of the imperfections of the first double-necked syringe made by your brother, Charles H. Davidson?

(Objected to.)

Ans. No.

Int. 3. Did you ever have any conversation with any man of the name of Farrar, upon the subject of the syringes invented and patented by yourself and your brother, at all?

Ans. No.

Int. 4. Do you remember whether or not the single-necked
280 syringe, with the glass jar, which was first made by your brother for Mrs. Delano's use, was returned to him before or at the time when the copper bed-pan was made?

(Objected to.)

Ans. I do not.

Cross-examination.

By A. F. Badger, esq., counsel for defendant:

Cross-int. 1. Did you ever visit the store of Geo. N. Davis, of Boston, prior to 1855?

Ans. Not to my knowledge.

Cross-int. 2. Did you visit said store during the year '55, or about that time?

Ans. Not to my knowledge.

Cross-int. 3. Did you testify, in the interference case of Alfred C. Garrett, and Chas. H. & Herman E. Davidson, declared by the United States Patent Office, in the year 1857, or thereabouts?

(Objected to.)

Ans. I did.

Cross-int. 4. Did you not testify in that case, that the first interview with your brother, Chas. H. Davidson, when a drawing of the instrument claimed as your joint invention was first made, was in the month of November?

(Objected to.)

Ans. I cannot recall.

Cross-int. 5. Has anything occurred since the time of giving your deposition in that interference case, to enable you to fix the date of your first conference with your brother on the subject of rubber syringes, with greater accuracy than you were able to do at that time, some nine years ago?

(Objected to.)

Ans. Yes.

Cross-int. 6. State what.

(Objected to.)

Ans. A conversation with my brother.

Cross.int. 7. State when that conversation occurred, and what it was.

Ans. Shortly after I gave in my testimony in the interference case. The precise words I cannot recall, but he brought to my mind that the first conference that took place on the subject of the syringe, was when he visited Gloucester, in the latter part of August, 1852, when his wife was there, and the children of Mr. Lockwood, and the fact that they returned with him to Boston.

281 Cross-int. 8. Then you base your testimony of the date of the occurrence of the first interview or conference with your brother upon the subject of syringes, upon the facts communicated by your brother in a conversation subsequent to the interference case, and not upon your distinct recollection of the occurrences at the time said first conference took place, do you not?

Ans. No.

HERMAN E. DAVIDSON.

Deposition of Wm. C. Hibbard, taken, subscribed, and affirmed to before N. Austin Parks, examiner, May 25th, 1866.—Direct examination.

By Causten Browne, esq., counsel for complainant:

Int. 1. State your name, age, residence and occupation?

Ans. My name is William C. Hibbard; age, 51 years; residence, West Roxbury; occupation, mechanical engineer.

Int. 2. State briefly what your special employments have been and

are in relation to mechanical matters, particularly as regards the comparison of mechanism in questions of substantial identity or difference, and to what extent, if at all, you have acted as expert on such questions in U. S. Circuit Courts.

Ans. I have been during the whole of the active part of my life engaged in designing and constructing machinery, examining and comparing inventions with reference to their similarity or difference. preparing applications for letters patent, and have many times acted as expert in mechanics in the trials of patent cases.

Int. 3. Have you examined the re-issue patent granted to H. D. Lockwood, assignee of C. H. & H. E. Davidson, for an enema syringe, dated April 25, 1865, so as to understand the construction and operation of the thing there described and represented?

Ans. I have examined the re-issue patent mentioned, and believe that I fully understand the construction and operation ot the syringe therein described.

282 Int. 4. Will you state briefly what you find to be the substantial construction and operation of that syringe?

Ans. I do not know that I could describe it more clearly than is done in the specification, or in much simpler language, or more correctly. In general terms it may be said to consist of an elastic bulb or reservoir, made of India rubber, which is designed to be held in the hand of the operator, and collapsed so as to expel the contents of it by the closing of the hand, and to have sufficient resilience or elasticity to recover its shape when the external pressure is removed. To this bulb are attached two flexible pipes, through one of which the fluid passes into the bulb, and through the other of which it escapes. The tubes being provided with valves respectively, which prevent the flow of the fluid in the opposite direction. By this compression and dilatation of the bulb the fluid is alternately received into and ejected from it through the two flexible pipes, by an action somewhat similar to that of a pump. The exterior end of the suction pipe is provided with a suitable fitting to receive the fluid from a vessel, and the exterior end of the delivery pipe is fitted with a proper termination to suit the orifice to be injected.

Int. 5. Will you look at the syringe labelled "Compt's Exhibit, No. 7, N. A. P., ex'r" and state whether it is, in your opinion, substantially similar to, or substantially different from, the syringe described and represented in said re-issue patent?

Ans. In my opinion it is substantially the same, differing in the form in which the tubes are attached to the bulb. It has substantially the same parts in combination, and operates in the same way.

Int. 6. Will you look at the syringe labelled "Exhibit I., R. C., Stilwell, ex'r," and known in the case as the Thier syringe, and state whether, in your opinion, that is in construction or in operation substantially similar to, or substantially different from, the syringe described and represented in said re-issue patent?

Ans. It is substantially different from it both in construction and operation, although it has some similarity, in that the pumping chamber, as it may be called, has an elastic or flexible side, and the contents of the chamber are expelled by pressing inward that side.

Int. 7. Will you point out the substantial differences in construction and in operation which you find to exist between this syringe and that which is described and represented in said re-issue patent?

283 Ans. The first and more material difference is, as I consider it, this, viz: that it does not have an elastic bulb or chamber in any such sense as those words describe the bulb shown in the re-issue patent. The larger part of the chamber in Exhibit I is of metal and rigid, not adapted to be held by the hand and collapsed in the manner of that shown in the re-issue, nor recovering its form by the elasticity or resilience of the material composing it; but the flexible side or diaphragm in this is forced outward by a spring placed within the chamber. From its form it is obviously not adapted to be used in the convenient manner, and in the same way in which the Davidson syringe is used. This difference, when viewed with reference to the peculiar purposes of a syringe, seems to me to be substantial and important. There is also an accessary device which is said to be an air-chamber, which is attached to the delivery pipe, for what useful purposes I know not, which, together with the general character of the construction of the whole apparatus gives it a character of complication and inconvenience which is wanting in the Davidson syringe, and which serves to show the substantial dissimilarity of the two things.

Int. 8. You say you knew not for what useful purpose the air-chamber attached to the delivery pipe is designed. Will you state what operation, in connection with the rest of the instrument, that air-chamber, supposing it to be flexible, can or may have?

Ans. It may prolong the flow of the fluid from the discharging pipe a very little after the collapsing of the chamber has ceased, but it does not seem to me that it could be of the least use in a syringe, so long as the rapidity of the flow depends upon the action of the hand of the operator.

Int. 9. Will you look at the syringe marked Exhibit D, and state whether, in your opinion, that is in construction and operation substantially similar to, or substantially different from, the one described and represented in the re-issue patent, and give your reasons for your opinion?

Ans. I think it is substantially different from the Davidson syringe in this: that it does not have the elastic bulb or chamber substantially such as is shown in the re-issue patent. In this exhibit the chamber is also partially elastic and partially rigid, the middle portion being formed of a cylindrical elastic tube with rigid metallic ends

284 or heads to it, which form a material portion of the inclosure, and by their connection with the elastic part of the chamber counteract or prevent the collapsing of the chamber to expel the fluid, as the mode of operation designed to be embodied by it requires. In this exhibit, when in its best estate, the chamber, when compressed by the hand could probably not have expelled one-half of its contents, and required a larger expenditure of force, probably beyond what could be exerted by a feeble person, and this is mainly

due to the cylindrical form adopted in connection with rigid heads of the same diameter, which prevent the collapsing of the chamber, except at the middle portion and at considerable distance from the heads, leaving the larger part of the contents within the chamber unexpelled. So far as regards the construction of the flexible pipes in connection with the chamber they appear to be substantially similar.

Int. 10. Will you look at the two syringes labelled respectively Exhibit G and Exhibit J, and state whether, in your opinion, they are in construction and operation substantially similar to, or substantially different from, the one described and represented in the re-issue patent? and if you say that they are, will you explain how they are distinguished substantially from Exhibit D?

Ans. In my opinion, they are substantially like that described in the re-issue patent, because they have an elastic spheroidal chamber of nearly the same form, the same material, and operating in the same way. There are metallic connections at the ends of the chamber with the flexible pipes, but they do not restrain or modify the operation of collapsing the flexible chamber, as is the case with Exhibit D, these connections being substantially outside of the operative parts of the chamber by the collapsing and dilatation of which the injection is accomplished.

Int. 11. What is the technical meaning of the term "bulb" used in the re-issue specification of the complainant; and of the term "spheroidal" there used? and of the term "elastic bulb or chamber" there used?

Ans. The term "bulb," in its general sense, means a spheroidal enlargement attached to a part of smaller diameter. The term "spheroidal" means a form approaching a sphere somewhat, but distorted in one direction, or in the direction of one diameter; as for instance, an oblate spheroid has its diameter at a right angle
285 to the axis of greater length than in the direction of the axis—like an onion, for instance. And a prolate spheroid has its diameter in the direction of the axis greater than at right angles to it, all spheroids being solids of revolution, as they are called. An "elastic bulb or chamber," as the term is used in the patent, and as I think it is generally used in the arts, is a bulb made of elastic material.

Int. 12. Please describe briefly, and in a familiar way, of what other than a spheroidal shape a bulb may be.

Ans. It may be of a great variety of forms, generally approaching a sphere; that is, a true sphere, or a true spheroid.

Cross-examination.

By Joel Giles, esq., counsel for complainant:

Cross-int. 1. Does it make any material difference in the character of the syringe whether the bulb be arranged in a line with the tubes, as in the re-issue patent, or at right angles with them, as in Exhibit No. 7, purporting to be defendant's syringe?

Ans. I do not think that it does so far as regards its mode of operation or combination of parts. It is a difference of form which may be more or less convenient, according to the special use for which it is required; but the substantial character of each of the parts which make up the instrument remains the same.

Cross-int. 2. Is the bulb in the re-issue patent one of the parts claimed in combination?

Ans. It is.

Cross-int. 8. Is the difference between the cylindrical chamber in defendant's Exhibit D, and the chamber in the re-issue patent, an improvement in that part of the syringe rather than in the combination of parts claimed in the re-issue patent?

Ans. It is an improvement in that part of the syringe by substituting for that chamber the elastic bulb shown in the re-issue, the other parts remaining substantially the same; which appears to me to make it a substantially different combination.

Cross-int. 4. By such difference is the function of the chamber altered in kind or improved only in degree?

Ans. It is not altered in kind; but I do not think that it
286 can be correctly said to be merely altered in degree. It seems to me rather to be the employment of a different device to produce the same result, or perform the same intended function in the combination.

WM. C. HIBBARD.

Adjourned to 26th inst., at 9 a. m.

Deposition of A. H. Ramsay, taken, subscribed, and sworn to before N Austin Parks, examiner, May 26th, 1866.—Direct examination.

By Causten Browne, esq., counsel for complainant:

Int. 1. State your name, age, residence, and occupation.

Ans. A. H. Ramsay; age, 61; residence, Cambridge, Mass.; occupation, apothecary.

Int. 2. How long have you been an apothecary in Cambridge?

Ans. Since '32.

Int. 3. During that time have you kept on sale the different kinds of improved injection syringes?

Ans. I have.

Int. 4. If, for any period of time after you commenced business as an apothecary in Cambridge, you were the only apothecary in Old Cambridge, will you state up to what year that was the case?

Ans. Up to '54, I think.

Int. 5. Do you now keep for sale the Davidson syringes? And if so, will you produce a specimen of them?

Ans. I do keep them for sale, and produce a specimen marked by the ex'r, complainant's Exhibit 24.

Int. 6. How long have you had the Davidson syringe for sale in your store?

Deposition of A. H. Ramsay, taken, subscribed, and sworn to before N. Austin Parks, examiner, May 26th, 1866.

Ans. That I couldn't say; six or seven years, perhaps. It might have been more; I couldn't say.

Int. 7. Did you ever have for sale syringes made by Dra-
287 per, of East Cambridge? And if so, will produce a sample of his syringe?

(Objected to as leading.)

Ans. Yes; it was very much after the patern of that now produced, and marked by the examiner Exhibit No. 25. When first introduced into this country it was called Maw's elastic syringe.

Int. 8. Which did you have for sale first, the Draper syringes or the Davidson syringes?

Ans. The Draper syringes.

Int. 8. State as nearly as you can how long you had the Draper syringes for sale before you got the Davidson.

Ans. I should think six or eight years we must have bought of him.

Int. 10. While you had the Draper syringes did you have any other kind of syringes on sale? And if so, what kinds?

Ans. Nothing but the old fashioned straight piston syringe, without hose.

Int. 11. Which of those two, the Draper syringe, or the piston syringe without hose, was the most expensive?

Ans. The Draper syringe.

Int. 12. Which was the most approved or preferred?

(Objected to.)

Ans. Draper's.

Int. 13. Why?

Ans. Because it could be used by an individual without a second person; was more compact and more easily kept in order.

Int. 14. Down to the time when you first knew of the Davidson syringe, had you ever seen a syringe of that construction; that is to say with an elastic bulb and two flexible tubes?

(Objected to as leading.)

Ans. I don't think I had. I think Davidson's was about the first I ever saw.

Int. 12. Until the Davidson syringes came out had you ever heard of such a syringe, viz, with an elastic bulb and two flexible tubes?

(Objected to.)

Ans. No.

Int. 16. Did you supply Mr. Joel Giles with medicines during his illness in Cambridge, in 1851?

Ans. I believe I did.

Int. 17. Did Mr. Giles and Dr. Wyman call upon you recently to inquire in regard to your recollection of a syringe said to have been used by Mr. Giles in that sickness?

(Objected to.)

288 Ans. They did.

Int. 18. When did they call, as nearly as you can remember?

Ans. Some time during the present year; Mr. Giles called one evening, I think about three weeks ago—Mr. Wyman, I think, in March last.

Int. 19. What did you tell them as to your recollection of such a syringe?

(Objected to.)

Ans. I told them that I had no recollection of seeing anything of the kind; didn't remember ever having one.

Int. 20. What was your selling price of the Draper syringes?

(Objected to as incompetent.)

Ans. I think when he first sold them he charged about six dollars, and afterwards put them down to about four. We used to put on a dollar or a dollar and a half profit.

Int. 21. What was your selling price of the Davidson syringes when you first got them?

Ans. I can't remember.

Int. 22. State it as nearly as you can remember.

Ans. It will be guess-work, it was so long ago. If I was going to guess, I should guess three dollars and a half. I shouldn't want to testify under oath that that was what I sold them for.

Int. 23. Do you believe that you sold them for more or less than four dollars?

(Objected to as leading.)

Ans. I think I sold them for less; I have testified to that.

Int. 24. Were you in the habit of letting syringes for temporary use, down to 1854, or since?

(Objected to.)

Ans. Yes, sir, as a very common thing before that time; we haven't much since, because syringes have become cheaper, and people are more willing to buy.

Cross-examination.

By A. F. Badger, esq., counsel for defendant:

Cross-int. 1. Do you mean to say that the instrument now produced, and marked Exhibit No. 25, was made by Draper?

Ans. No; that wasn't made by Draper, I shouldn't think.

Cross-int. 2. When did you first see Exhibit No. 25?

Ans. Here, this morning.

289 Cross-int. 3. Do I understand you to say that you had syringes for sale of Draper's make exactly like Exhibit 25?

Ans. I should not say exactly. They were probably patterned after the Maw syringe, but were a little more compact—smaller boxes.

Cross-int. 4. When are you willing to swear you had the Draper syringe substantially like Exhibit 25 for sale for the first time?

Ans. A pretty hard question that; the year and all that I could not answer to come within a gun shot.

Cross-int. 5. Are you able to swear that you had never seen a syringe having an elastic bulb or chamber and two flexible tubes before you saw the Davidson syringe?

Ans. I guess you'll find that's answered.

Cross-int. 6. Please to answer it again distinctly.

Ans. As I answered before, I think the Davidson syringe was the first one I saw.

Cross-int. 7. Will you swear that you had never seen a rubber syringe having an elastic bulb or chamber and two flexible tubes before you saw the Davidson syringe?

Ans. No, sir, I never did.

Cross-int. 8. Did you ever see the Mattson syringe, having an elastic bulb and flexible tubes?

Ans. I've seen them, but never had any of them.

Cross-int. 9. When did you first see the Davidson syringe with an elastic bulb and two flexible tubes? Fix the time as accurately as you can, that you are willing to swear to.

Ans. Well, it must have been eight years ago. It might have been longer. I couldn't say.

Cross-int. 10. You say, in answer to fourteenth interrogatory, "I think Davidson's was about the first I ever saw." Did you see other syringes answering the description in the fourteenth interrogatory at or about the same time?

Ans. I've no recollection of it. I'd make the same answer that I did there.

Direct examination resumed.

Int. 25. Will you state any difference that you see between
290 the instrument labelled "25" and the Draper syringes that you used to sell, unless it be in the matter of size.

Ans. As to the valves I'm not certain whether Draper made metallic valves or put in marbles as in here. I don't know that there is any other difference. He used to make his a little more compact.

Int. 26. Did you ever before see syringes like either of the two now shown to you, one labelled D, and the other I? If so, how long ago did you first see them?

Ans. This is the first time ever I saw either of those.

Int. 27. Have you any books or bills by which you can tell when you first bought the Draper syringes, or had them for sale?

Ans. I don't think I have.

In. 28. Are you not able to state from recollection more nearly than you have done when you first had the Draper syringes for sale?

Ans. I couldn't recollect the year, possibly. I don't know as I could get any nearer unless by reference to my books or something to bring it about.

Int. Will you examine what books or other references you have, and if they enable you to give this date more accurately, come in and tell us the result?

Ans. Yes, sir.

A. H. RAMSAY.

Adjourned to Monday, 28th May, '66, at 9 a. m.

H. D. Lockwood, recalled.—Taken, subscribed, and sworn to before N. Austin Parks, examiner.—May 29th, 1866.—Direct examination.

By Causten Browne, esq., counsel for complainant:

Int. 1. When you were last upon the stand you stated that during a visit you made to London and Paris you found in those places respectively two kinds of bulb and tube syringes which operated without valves; will you produce those two syringes, if you can, that they may be marked as exhibits in the case?

(Objected to.)

291 Ans. I can; the one bought in London is marked C'ts Exhibit, No. 26; that bought in Paris is marked C'ts Exhibit No. 27.

Int. 2. Will you produce a specimen of the Davidson bulbs as you make them, showing the bulb as a separate part?

Ans. I produce one marked C'ts Exhibit No. 28.

Int. 3. Is C'ts Exhibit No. 26 in the same condition as when you bought it?

Ans. Exactly.

Int. 4. How and where was this Exhibit No. 26 found for you by the person from whom you obtained it?

Ans. I went into the person's place of business in search of any old India rubber syringe that I might find, and this one was handed to me as being one that had been returned for some defect or other, I don't remember what.

Int. 5. Was it produced from among articles which he had for sale, or how otherwise?

(Objected to as leading.)

Ans. It was not; it was taken from a box containing several discarded medical and surgical instruments. I don't remember precisely what was in the box. I didn't pay attention to anything else.

Int. 6. State what this person said at the time in regard to the absence of valves from this instrument.

(Objected to.)

Ans. He told me there were no valves in it; that the first instruments, or some of the first, did not have valves in them at all, but were used by the person's using the thumb and finger on the tubing, which acted the same as a valve.

Cross-examination.

By Geo. S. Boutwell, esq., counsel for defendant:

Cross-int. 1. When and where did you purchase the syringe marked "Complainants Exhibit No. 26?"

Ans. In the summer of 1861, in London.

Cross-int. 2. Of whom?

Ans. It's impossible for me to state; I didn't notice the man's name. I went from place to place, in London, getting what information I could about elastic syringes, and in one of the places I went to in High Holborn I found Exhibit 26, and if I were in the city of Lon-

don at this time could go directly to the shop if it is now standing.

292 Cross-int. 3. How many syringes did you buy of the same person that you bought "No. 26" of?

Ans. Only that one.

Cross-int. 4. What was your object in buying that one?

Ans. I wanted to get all the different kinds of syringes that had any resemblance to the one I manufactured, as I wished to go to the bottom of the whole matter before I spent any money in a lawsuit.

Cross-int. 5. Was the person of whom you bought this syringe a manufacturer of syringes?

Ans. Not to my knowledge. He might have made such an article; if he did, he told me nothing of the kind.

Cross-int. 6. What else, if anything, did he keep for sale besides syringes?

Ans. A large assortment of surgical and medical instruments, dental instruments, &c., and a great quantity of things that I couldn't tell what they were for. I didn't notice particularly what instruments he had, as my business only called forth this one point, and I wasn't interested in anything else.

Cross-int. 7. When you were in London in '61, did you purchase any other syringes besides the one shown, "Exhibit 26?" and if so, how many, and of whom?

Ans. I bought a Higginson's barrel syringe—barrel syphon—like Exhibit D of defendants, and I think one or two syringes with but one rubber tube and a metal stem to be inserted in the enema, instead of a second rubber tube. I can't answer of whom any better than before. I bought them in the same way as I bought that, as I went from place to place.

Cross-int. 8. Your purpose was, as I understand, to ascertain whether any syringes had been made that conflicted with, or impaired your right as assignee under the Davidson patent. Is that so?

Ans. It was.

Cross-int. 9. Do you know who was the maker of "complainant's Exhibit, No. 26?"

Ans. I do not.

Cross-int. 10. Do you know when or where it was made?

Ans. I do not.

293 Cross-int. 11. What did you do, if anything, while in London, for the purpose of ascertaining when, where, or by whom it was made?

Ans. I saw several parties, surgical and medical instrument manufacturers, and tried to find others of the same kind. They told me they had seen them, but did not keep them, as there were others in the market which were better and had taken the place of them.

Cross-int. 12. Give the names of parties referred to in your last answer.

Ans. I cannot do it, as there are such a large number of said manufacturers in London it would be impossible for me to remember their names, as I visited a great number of them, unless I should

make a memorandum of them, which I did not do, not thinking that I should ever have occasion to refer to them again.

Cross-int. 13. How many manufacturers did you see and converse with for the purpose of ascertaining the history of syringe "Exhibit 26"?

Ans. I couldn't tell you; I probably didn't ask all the manufacturers that I saw.

Cross-int. 14. Can you name any one that you did ask about the syringe in question?

Ans. I cannot. I went from store to store as any stranger would in a strange place, not knowing any of the parties.

Cross-int. 15. For what purpose did you visit England in 1861?

Ans. Partly on account of my health, but mainly on this business. I want to say here that I wouldn't want to swear that it was '61; it might have been '62, but I think not; I am almost positive it was in '61, I remember that I bought my gold at only 1½ pr. ct. advance.

Cross-int. 16. Did you have letters to any manufacturers of or dealers in syringes? If so, to whom?

Ans. I did not; I was a perfect stranger to all of them.

Cross-int. 17. When, where, and of whom did you purchase syringe marked "Compl'ts Exhibit 27"?

Ans. In the same summer, of Galante & Co., in Paris.

Cross-int. 18. In whose possession has Exhibit 26 been since you purchased it in 1861?

Ans. Only in my own and Mr. Browne's.

294 Cross-int. 19. Where has it been during the last three months?

Ans. In Mr. Browne's possession.

Cross-int. 20. Are you the complainant in the cause in which your deposition is now taking?

Ans. I am.

Cross-int. 21. Were you examined in the same cause in Mr. Browne's office on or about the 3d day of the present month?

Ans. I have been examined at Mr. Browne's office in this cause but can't state the date.

Cross-int. 22. Did you then describe syringe "Exhibit 26"?

Ans. I did, sir; or, in other words, I described a syringe like it; the exhibit wasn't present.

Cross-int. 23. Why was not syringe "Exhibit 26" then produced?

Ans. I cannot tell you. Mr. Browne can tell you better than I, as he has the management of the case.

Cross-int. 24. To what persons, if any, except your counsel in this case, have you shown syringe "Exhibit 26"?

Ans. I couldn't say for a certainty whether any other person had seen it to take it and examine it but my counsel, but it has been in the presence of my book-keeper, the foreman of my shop, and I think Dr. Davidson. I don't know whether they took it up and examined it or not.

Direct resumed.

Int. 1. State the whole of what you did in London and Paris for the purpose of ascertaining if there was anything which conflicted with or impaired your rights under the Davidson patent, and what was the result.

Ans. As I stated before, I went to a great many manufacturers, saw a great many syringes, both of elastic material and of rigid material, but found nothing that appeared to be constructed in the same way and of the same shape as the Davidson until 1855 and '56. All the manufacturers and keepers of surgical instruments to whom I went told me that the first they saw of anything of that kind was at about that time. That the Maw syringe, like Exhibit 25, was the instrument most used previous to that date, and that even to the present time ('61) great numbers of them were used and sold.

(Answer objected to seasonably.)

H. D. LOCKWOOD.

Adjourned to 4 p. m.

295 *Deposition of Joel W. Norcross, taken, subscribed, and sworn to before N. Austin Parks, examiner, May, 28th* 1866.—*Direct examination.*

By Causten Brown, esq., counsel for complainant:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Joel W. Norcross; age, 44 years; residence, Lynn, Mass.; occupation, merchant; I am not now in business.

Int. 2. Were you the senior partner of the firm of J. W. Norcross & Co., of Boston? If so, when did that firm, or your connection with it, cease to exist?

Ans. I was the senior partner of that firm. We never dissolved. We made an assignment in New York in March, 1861.

Int. 3. Have you here present the first invoice book of foreign importations of goods by the firm of J. W. Norcross & Co.?

Ans. Yes, I have. It is labelled on the back "Foreign Invoice, A. J. W. N. & Co."

Int. 4. Did J. W. Norcross & Co. ever have for sale any French syringes consisting of a bulb of elastic material, and two flexible tubes extending in any direction therefrom?

Ans. They did.

Int. 5. When first?

Ans. I can't tell what time those were received; but the invoice of them was sent from Paris, August 24th, 1855.

Int. 6. Will you read the entry in the invoice of that date which relates to such syringes?

Ans. "6881. 1-12 doz. Clissoirs Anglais Genne Vale. 60. 5." The figure "60" is the price in francs per dozen. The figure 5 the price in francs per syringe with the discount off.

Int. 7. When was your next importation of such syringes?

Ans. The date of the invoice was November 24th, 1855. The entry in the invoice book is as follows:

"6881. 2 doz. Clissoirs Anglais 10 & 2 pr. ct. 60. 120." The figures "60" and "120" referring to the price in francs as before.

Int. 8. Who bought the single syringe mentioned in the first invoice above referred to?

296 Ans. Mr. Wm. H. Sargent, my partner. Mr. Sargent went out to Europe, as was our custom, that spring, for the first time, to select goods and samples. I don't know but it was as late as the first of June that he went out.

Int. 9. Did your house at any time buy imported syringes from American houses?

Ans. I think not.

Cross-examination.

By A. F. Badger, esq., counsel for defendant:

Cross-int. 1. Had you ever seen a syringe having an elastic bulb and two flexible tubes, prior to the importation of them by your house?

(Objected to.)

Ans. I don't recollect ever seeing any.

Cross-int. 2. Can you give me the meaning in English of the entry in your invoice book, "Clyssoirs Anglais?"

Ans. Not understanding French, I cannot.

Cross-int. 3. Of whom were the invoices mentioned in your direct examination purchased?

Ans. They were purchased through a commission house; the firm was Ad. Honneger & Co.

Cross-int. 4. When did the firm of J. W. Norcross & Co. commence business?

Ans. February 1st, 1855.

Cross-int. 5. What has been your business previous to that?

Ans. The same business.

Direct resumed.

Int. 10. What was your firm in the year 1854?

Ans. Norcross & Towns.

Int. 11. Did that firm import any rubber syringes in that year?

Ans. That I couldn't answer.

Int. 12. Did they import any rubber syringes of the kind before mentioned, that called "Clyssoirs Anglais"?

Ans. I think not.

Cross-examination resumed.

Cross-int. 6. Have you the invoice books of Norcross & Towne?

297 Ans. I think not.

Cross-int. 7. Can you tell where they are?

Ans. I think they were destroyed—sold for old paper, I believe, in the year '61, when paper was so high.

Cross-int. 8. Can you swear that the firm of Norcross & Towne did not import, or have for sale, any syringes having an elastic bulb or chamber and two flexible tube, while you were connected with that firm?

Ans. I don't think we did. I couldn't swear positive.

Direct examination resumed.

Int. 13. What was the character of the business done by Norcross & Towne, in '54, as compared with that by J. W. Norcross & Co., in 1855?

Ans. I think in '55, when my partner went to Paris, we commenced to buy more of every kind of surgical goods. In '54 I went to Europe, and as I didn't understand that class of goods so well, I bought more fancy goods.

Int. 14. Was your business, in 1854, mainly a fancy goods business? (Objected to as leading.)

Ans. Both in '54 and '55, it was mainly a fancy goods business.

Cross-examination resumed.

Cross-int. 9. Do not dealers in fancy goods, as you say in your last answer your firm were, generally keep syringes?

(Objected to.)

Ans. I believe wholesale dealers do.

JOEL W. NORCROSS.

Adjourned to 29th, at 10 a. m.

F. C. Cross recalled.—Taken, subscribed, and sworn to before N. Austin Parks, examiner, May 29th, 1866.—Direct examination.

By Causten Browne, esq., counsel for complainant:

298 Int. 1. When in Paris, the present year, as previously testified, did you procure, at the store of H. Galante & Co, one of their trade pamphlets or circulars? If so, will you produce it, to be marked "Compl'ts Exhibit No. 29?"

Ans. I did; and I produce it, marked "Compl'ts Exhibit No. 29."

Int. 2. When in Liverpool, the present year, as previously testified, did you buy a syringe? If so, will you produce it, to be marked Exhibit No. 30?

Ans. I did; it is marked "Compl'ts Exhibit No. 30,"

Int. 3. What did you ask for, in reply to which that syringe was produced?

Ans. Dr. Kennedy's patent enema syringe. The party replied that there was no longer any patent on it as a syringe.

Cross-examination.

By Geo. S. Boutwell, esq., counsel for defendant:

Cross-int. 1. What is your connection with this cause, or with the complainant, Mr. Lockwood?

Ans. I have been employed by Mr. Lockwood as an agent to find what testimony I could on the subject of rubber syringes, both in Europe and in this country.

Cross-int. 2. How long have you been so employed?

Ans. At intervals for the last year and a half.

F. C. CROSS.

Adjourned to 5 p. m.

Deposition of Francis Draper, taken, subscribed and sworn to before N. Parks Austin, examiner, May 29th, 1866.—Direct examination.

By Causten Browne, esq., counsel for complainant:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Francis Draper; age, 55 years; residence, Cambridge, Mass.; occupation, manufacturer of brass, britania, and iron metals.

299 Int. 2. Have you ever manufactured and sold syringes like that marked Complainant's Exhibit No. 25?

Ans. Similar to that; not exactly like it.

Int. 3. What difference was there?

Ans. Instead of being a ball valve, there was a half round valve with a stem to it.

Int. 4. When did you begin to manufacture those syringes?

Ans. In 1833, I think.

Int. 5. By what name were they known?

Ans. They went by the name of Maw's syringes.

Int. 6. Did you ever sell any of those syringes to Dr. A. H. Ramsay, of Cambridge? If so, how early did you sell him any?

Ans. I did, in 1838. That is the first charge I have on my books—April 23d, '38.—I may have sold him some earlier, for which he paid cash.

Cross-examined.

By Geo. S. Boutwell, esq.:

Cross-int. 1. Was this syringe, Exhibit 25, made by you?

Ans. No, sir.

Cross-int. 2. By whom was it made, if you know?

Ans. I couldn't tell you. It looks some like a pattern that come from Philadelphia.

Cross-int. 3. In what particulars did those you say you made in '33 differ from that—Exhibit 25?

Ans. The valve was a half-round valve with a stem to it, instead of a ball valve.

Cross-int. 4. In what way did you get the information which enabled

you to make a syringe of the kind described as having been made by you, in 1833?

Ans. There was some imported ones brought to me, or shown me.

Cross-int. 5. When, and by whom, were those imported ones made?

Ans. They were stamped Maw & Sons, London.

Cross-int. 6. Did those imported syringes contain a valve, such as you describe as made by you?

Ans. They did.

Cross-int. 7. In what part of the imported syringe was the valve placed?

300 Ans. In the same place that they are in this one, I think.

Cross-int. 8. How many valves were put in such syringe, and what was the office of each?

Ans. There were two valves, one for the purpose of drawing water, and the other for forcing it out, or for holding it while the piston rod was going down and forcing it out.

Cross-int. 9. Will you look at defendant's Exhibit G, and state whether the office performed by the valve in that syringe is substantially the same as that performed by the valves in complainant's Exhibit No. 25 or not.

Ans. Yes; they would answer the same purpose.

Cross-int. 10. Have you had knowledge of syringes made in England and France, or other countries, since 1833? and if so, what knowledge?

(Objected to.)

Ans. There have been different syringes shown me, during that time, which were made in England and France.

Cross-int. 11. Have such syringes been generally furnished with valves, performing substantially the same office as in Exhibit 25 of complainant, and defendant's Exhibit G?

(Objected to.)

Ans. They have. I never saw any without valves.

FRANCIS DRAPER.

Interrogatories to Fabrequettes Fils, Morra, Wagner, and Grosholz.

Depositions of Eugene Fabrequettes Fils, Joseph Morra, H. G. Wagner, Philippe Grosholz, and Henry Galante, taken on behalf of the complainant, before John G. Nicolay, U. S. Consul and Commissioner at Paris, under a commission, upon interrogatories and cross-interrogatories as follows:

Int. 1. State your full name, your residence, and your occupation, and the name of your firm.

301 Int. 2. Howlong and how extensively, and in what city, have you been engaged in your present business?

Int. 3. Have you or your firm ever sold India-rubber syringes having an elastic bulb or sac, and two flexible tubes connected there-

with in such manner that the compression of the bulb or sac by the hand would expel the fluid therefrom through one of the tubes, (the injection tube,) and the release of the bulb or sac would cause the fluid to be drawn into it by suction through the other tube, (the suction tube,) the instruments being provided with valves which permitted or controlled the flow of the fluid accordingly? If yea, will you produce a specimen or specimens, or a drawing or drawings, of every kind of syringe having the said construction and operation which you sold before the year 1855, if any, and when you first sold such syringes, as nearly as you can, and state particularly how you ascertain the time?

Int. 4. Please to state whether you or your firm exported to the United States either to Fabriquettes fils & Morra of New York, or to L. & P. Groshols of Philadelphia, or to Richard Wright of Philadelphia or to Frederick Liese of New York, or to any other and what American house, at any time, any syringes of the construction and operation described in the foregoing question, before the year 1855; and will you state when you so exported such syringes for the first time to each house, as nearly as you can, and state how you ascertain the time? and will you annex, if you can, copies of the order and of the invoice?

Int. 5. Please to state from whom you obtained such syringes to sell, and by whom they were manufactured, and whether said manufacturer is now living, and where he resides.

Int. 6. Please to state how such syringes were marked, with the name of what manufacturer, if any, or with the name of what patentee, if any, and on what part of the syringe such mark was placed.

Int. 7. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, will you set forth the same fully and at large in your answer?

302 *Interrogatories to H. Galante.*

Int. 1. State you full name and residence, and occupation, and the name of your firm.

Int. 2. How long and how extensively, and in what city, have you been engaged in your present business?

Int. 3. Have you ever manufactured, or been concerned in manufacturing, or sold, or been concerned in selling, India rubber syringes having an elastic bulb or sac, and two flexible tubes connected therewith in such manner that the compression of the bulb or sac by the hand would expel the fluid therefrom through one of the tubes, (the injection tube,) and the release of the bulb would cause the fluid to be drawn into it by suction through the other tube, (the suction tube,) the instruments being provided with valves which permitted or controlled the flow of the fluid accordingly? If yea, will you produce a specimen or specimens, or a drawing or drawings, of such

syringes made or sold by you before the year 1855, if any, and state when you first made syringes of that construction and operations.

Int. 4. Please to state the circumstances which led to your manufacture of such syringes; if they were designed as an improvement on any English syringes, and if so, what one, and what practical objections, if any, existed thereto, which your improvement was designed to remedy?

Int. 5. For what houses in Paris, if any, did you make such syringes, or to what did you supply such before 1855? Give the names, if you can, of all the houses in Paris which had them of you before that year?

Int. 6. What knowledge had you, before 1855, of the state of the surgical instrument manufacture and business in Paris?

Int. 7. Did you know of the existence in France of any such syringes as those described in the third interrogatory, prior to your own manufacture of them?

Int. 8. Do you think they existed there before you manufactured them? and state the reasons, if any, why you should have known the fact if they did so exist.

Int. 9. Please to state how such syringes were marked, if at all, by you or your firm, as made by you before 1855 and since, and on what part of the syringes such mark was placed.

303 Int. 10. Do you know, or can you set forth, any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, will you set forth the same fully and at large in your answer?

CAUSTEN BROWNE,
Solicitor for Complainant.

The defendants object to the plaintiff's commission and interrogatories to take the testimony of Eugene Fabriquettes, fils, Morra, Grossman, Wagner, L. Groshols, and P. Groshols and H. Galante, of Paris, France, because not relevant to any issue in said cause, but file the following cross-interrogatories to be proposed to each of said witnesses (de bene esse).

Cross-interrogatories.

Cross-int. 1. State the date, as nearly as you can fix it, when you first had knowledge of, or made, or sold, or exported to the United States of America, any injection syringe having an elastic bulb or chamber, flexible tubes and suitable valves, so organized as to operate by compressing the bulb intermittently.

Cross-int. 2. State the names of the places to which, and of the persons to whom, in the United States of America, you exported any such syringes, and the date of exportation.

Cross-int. 3. State the date and the country, if any and all patents obtained by you prior to 1857 for any elastic injection syringe.

BOUTWELL & BADGER,
Solicitors and of Counsel for Defendants.

Deposition of Fabrequettes, fils.

To the first interrogatory: My full name is Eugene Fabre-
304 quettes. I reside at Paris, 23 faubourg St. Denis, and am a commission merchant. The name of my firm is Eugene Fabrequettes, Morra & Co.

To the second interrogatory: I have been engaged fourteen years in my present business, and in Paris, and have exported largely to all the principal cities of the United States.

To the third interrogatory: My firm has sold at different times India rubber syringes having the form and operation described. I cannot produce a specimen or drawing of those sold by my firm prior to the year 1855, because, as I learn from my books, we sold before that time only two dozen in all, and I cannot remember the details of their construction. We first sold them December 16th, 1854. I ascertain the time from an examination of our invoice books.

To the fourth interrogatory: My firm exported to the United States these syringes before the year 1855 to the firm of Frederick Liese, of New York, and to that firm only. We exported them for the first time the 16th December, 1854. I ascertain the time from an examination of our invoice books. I annex hereto—marked "Exhibit D"—a copy of the invoice. I cannot produce a copy of the order, for our orders are destroyed at the end of each month.

To the fifth interrogatory: We obtained said syringes of the firm of Varnout and Galante, of Paris, who, to the best of my belief, manufactured them. Mr. Galante now lives at 28 Place Dauphine, in this city. Mr. Varnout I have known nothing of for several years.

To the sixth interrogatory: I do not know whether the syringes were marked or not, or whether or not they bore the name of a patentee, or upon what part of the syringes these marks were placed, if they bore them.

To the seventh interrogatory: I cannot set forth any other matter or thing which might be of benefit or advantage to the parties at issue, or that might be material to the subject of my examination, or the matters in question in the cause.

To the first cross-interrogatory: I first exported to the United States the syringes described in this interrogatory the 16th of December, 1854.

To the second cross-interrogatory: I exported such syringes in December, 1854, to Frederick Liese, of New York, to the same house the 20th July, 1855, and in 1858 to Bernhard and Fabre-
quettes, jr., of New York.

305 To the third cross-interrogatory: I have never obtained a patent in any country for any elastic syringe.

EUG. FABREQUETTES, JR.

Deposition of Joseph Morra.

To the first interrogatory: My full name is Joseph Morra; I reside at Paris, at No. 23 faubourg St. Denis; am a commission merchant, and the name of my firm is Eugene Fabrequettes, Morra & Co.

To the second interrogatory: I have been engaged in my present business for thirty years, and have exported largely to the United States.

To the third interrogatory: I have no recollection of ever having seen the syringe in question, and cannot say, from my own personal knowledge, whether my firm ever sold it or not.

To the fourth interrogatory: We exported to Frederick Liese, the 16th December, 1854, two dozen syringes, designated upon our books as "clysoirs boules;" but I have no recollection of the construction or operation of the syringes so designated. This is the first entry upon our books of the exportation of such syringe. I identify, as a correct transcript from our invoice books, a paper writing, marked "Exhibit D," and signed by me, hereunto annexed. I cannot give a fuller answer than this to the present interrogatory.

To the fifth interrogatory: The syringes of which I spoke in my answer to the last interrogatory as having been exported by our house to Frederick Liese, of New York, were bought by us of "Varnout & Galante," surgical instrument manufacturers. Mr. Galante is still living at No 28 Place Dauphine, in this city. I cannot give a fuller answer to this the fifth interrogatory.

To the sixth interrogatory: I do not know.

To the seventh interrogatory: I have been always engaged principally in the financial department of our business, and had but little to do with the purchase of goods. I do not know, nor can I set forth any other matter or thing which may be a benefit or advan-
306 tage to the parties at issue in this cause, or either of them, and that may be material to the subject of this examination, or to the matters in question in this cause.

To the first cross-interrogatory: I have never had knowledge, to the best of my recollection, of the syringe described in this interrogatory. I cannot say whether or no my firm ever exported such syringe to the United States; or if they did, the date of such exportation.

To the second cross-interrogatory: My firm has exported elastic syringes to Frederick Liese, of New York, and to Bernhard, and Fabrequettes, jr., of New York, at different dates, from 1854 to 1858, but I do not know whether they were or were not of the construction described in the last interrogatory.

To the third cross-interrogatory: I have never obtained a patent in any country for any elastic syringe.

J. MORRA.

Deposition of H. G. Wagner.

To the first interrogatory: My full name is Henry Guillaume Wagner; I reside in Paris, at No. 44 rue des petites ecuries; I am consul of Saxe-Weimar, and was from 1838 to 1855 a member of the firm of Grossman & Wagner, and from 1855 to January 31st, 1866, was at different times a member of the firms of Hutchinson, Henderson & Co., Hutchinson, Smyth & Co., and Hutchinson, Wagner & Co., all of which houses were engaged in the manufacture of rubber; I am now retired from business.

To the second interrogatory: I retired from business the 31st Jan. last; previous thereto I had been engaged in the manufacture of rubber in Paris since 1838; my firm manufactured largely for the French market and for exportation.

To the third interrogatory: I never sold the syringe in question myself; I do not know whether my partners did or did not.

To the fourth interrogatory: I never did myself; I do not know whether my partners ever did or not.

To the fifth interrogatory: I do not know whether my firm ever bought them or not, or if they did, of whom.

To the sixth interrogatory: I can only reply to this inter-
307 rogatory, that I have no recollection of ever having seen the syringe in question, and I do not know how such syringe was marked, if the syringe existed.

To the seventh interrogatory: While in the rubber business, since 1850, I was always engaged at our factory, and my partners had charge of the sales department of the business; I do not know, nor can I set forth any other matter or thing that may be of benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this, my examination, or the matters in question in this cause.

To the first cross-interrogatory: I can only say in reply to this question, that I have no recollection of having ever seen the syringe described in this interrogatory. I know nothing whatever about it, and cannot say whether or not my firm ever sold or exported it, and cannot say whether or not any firm ever sold or exported it.

To the second cross-interrogatory: I never exported them myself; I do not know whether my firm ever did or not, or if they did, to whom they exported them.

To the third cross-interrogatory: I never obtained a patent for any elastic injection syringe, myself; I do not know whether my firm ever did or not.

HN. GLM. WAGNER.

Deposition of Philippe Groshols.

To the first interrogatory: My full name is Philippe Groshols; I reside in Paris at 46 rue du faubourg Poissoniere; am a merchant, and the name of my firm is in Paris, Philippe, and in Philadelphia, Louis & Philippe Groshols.

To the second interrogatory: I have been engaged in my present business since 1843 in Paris, and since 1845 in Philadelphia. I export very extensively to the United States of America.

To the third interrogatory: I nor my firm have never sold the syringes in question.

To the fourth interrogatory: I nor my firm never at any time exported to either of the houses mentioned, nor to any other American house, any syringe of the construction and operation described in the third interrogatory.

308 To the fifth interrogatory: I never obtained the syringe

described from any one, and do not know who ever manufactured such syringe, or whether the manufacturer is now living.

To the sixth interrogatory: I never saw such syringe, and consequently do not know what mark it may have borne, if the syringe existed.

To the seventh interrogatory: I do not know, nor can I set forth any other matter or thing that may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this my examination, or the matters in question in this cause.

To the first cross-interrogatory: I never had knowledge before to-day, and never sold or exported to the United States, syringes of the operation and construction described in this interrogatory.

To second cross-interrogatory: I never exported to any place or person in the United States of America any such syringe.

To the third cross-interrogatory: I never took a patent in my country for any elastic injection syringe.

PH. GROSHOLS.

Deposition of H. Galante.

To the first interrogatory: My full name is Henri Galante; I reside at No. 28 Place Dauphine, in the city of Paris. I am engaged in the manufacture of rubber surgical instruments. The name of my firm is H. Galante & Co.

To the second interrogatory: I have been engaged in my present business since 1851. I have sold goods to all the large commission houses of Paris, and have exported to most of the principal cities of Europe. I have always done business in Paris.

To the third interrogatrry: I have manufactured and sold India rubber syringes having an elastic bulb or sac, and two flexible tubes connected therewith, provided with valves and working in the manner described in this third interrogatory. I cannot produce a specimen or drawing of such syringes made or sold by me before the year 1855, because I never manufactured them before the month of March of the year 1855. I produce herewith, marked "Exhibit A,"
309 a specimen of the only rubber syringe made or sold by me before 1855. I began the manufacture of this syringe in the month of June, 1854. I also produce herewith, marked "Exhibit B," a specimen of the syringe described in this third interrogatory, which I first manufactured in the month of March, 1855.

To the fourth interrogatory: I visited London in the beginning of June, 1854. I there saw for sale a syringe identical with that here. with produced as "Exhibit A," which I bought and brought to Paris as a model. They were until then unknown in France, and I immediately began their manufacture which I continued till March, 1855. Those made by me up to March, 1855, were intended as a reproduction of the English model. Those made by me during and since March, 1855, were intended as an improvement upon the English syringe, the objections to which were the smallness of the volume of

liquid contained by it, and the difficulty of the liquid's expulsion, which objections were remedied in those manufactured by me during and after March, 1855, by the change of form from the cylinder to the bulb or sac.

To the fifth interrogatory: I did not manufacture before 1855, the syringe described in interrogatory three, and therefore supplied them to no house before that year. The syringe herewith produced, marked "Exhibit A," I supplied before the year 1855 to the following houses and to no others in Paris, viz: Robert Theissier, Fabrequettes fils & Mora, Oppenheim, Honnegar & Co., Grimal, Koevring, Philip Schloss, Daireaux & Daguerree, D. Potonie & Co.. Albert Winel, Chevalier & Co., Dressel & Co., Blanchard freres, Oller Chatard & Co., Mondez & Lima.

310 To the sixth interrogatory: Between the years 1851 and 1855, my firm was the only house in Paris engaged in the manufacture of surgical instruments in rubber, consequently my knowedge of the state of the surgical instrument manufacture and business in Paris was intimate.

To the seventh interrogatory: I did not know of the existence in France of any such syringes as those described in the third interrogatory prior to my own manufacture of them.

To the eighth interrogatory. I do not think they existed in France before I manufaciured them. I should have known the fact if they had so existed, because we were the only house in France engaged in the manufacture of rubber surgical instruments, and because we published in different languages each year, from 1851 to 1855, a complete catalogue of instruments manufactured from vulcanized caoutchouc used in the praclice of medicine and surgery, and if such syringe had existed it would have been mentioned in such catalogue, whereas it was not. I produce herewith, marked "Exhibit C," a specimen of this catalogue published at my house in Paris, in English in 1854.

To the ninth interrogatory: The syringes manufactured by us preuious to the month of March, 1855, were not marked by me or by my firm. Those manufactured by us since the month of March, 1855, bore the mark of "H. G. & Co." upon the elastic bulb as in the specimen herewith produced marked "Exhibit B."

To the tenth interrogatory: I do not know, nor can I set forth any other matter or thing which might be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this my examination or the matters in question in this cause.

To the first cross-interrogatory: I first had knowledge of an injection syringe having an elastic chamber, flexible tubes and suitable valves, so organized as to operate by compressing the chambers intermittently, in June, 1854. I manufactured them first in June and July, 1854, and first sold them in July, 1854. This instrument I have already referred to as herewith produced, marked "Exhibit A." I first had knowledge of and manufactured and sold an injection syringe having an elastic bulb flexible tubes and suitable valves, so

organized as to operate by compressing the bulb intermittently, in the month of March, 1855.

To the second cross-interrogatory: I never exported any syringes to any place or to any person in the U. S. of A.

311 To the third cross-interrogatory: I never took a patent in any country prior to 1857 for any elastic syringe, with the exception of a patent obtained in France in 1851, for the syringe designated as No. 11, and described on page 13 in the catalogue herewith produced as "Exhibit C." H. GALANTE.

"*Exhibit D.*"

Belonging to the depositions of Eugene Fabrequettes fils, and Joseph Morra, witnesses for the complainant, in a suit pending in the Circuit Court of the U. S., for the Mass. district, wherein H. D. Lockwood is plaintiff, and D. B. Morey and others are defendants.

Witnesses sworn the 22d March, 1866.

(Signed) EUG. FABREQUETTES.
J. MORRA.

(Signed) JNO. G. NICOLAY,
U. S. Consul and Com'r.

Achete pour le Compte de Mr. F. Liese a New York par Mm. Eug Fabrequettes fils & Morra a Paris.

F	L					
158	67	36	hydroclyses acajoux, 5 75.....	207 —		
			3 p. c.....	6 20		
						200 30
	69	12	clyso-pompe tancelles, 10 — ..	120 —		
			30 × 2 p. c.....	37 70		
						82 30
	813	6	douz. tets cout boite jaun, 35 —	210 —		
			2 p. c.....	4 20		
						205 80
	837	36	clyso virigateurs ord, 7 —	252 —		
			3 p. c..	7 55		
						244 45
		102	mitres tubes catou. — 60.....	61 20		
			12 p. c..	7 35		
						53 85
312	1885	16	tablettes de 27 c^m acajon 12 —	192 —		
	260	3	balances anglaises de 2 K^o 25 —	75 —		
	262	2	" " 5 K^o 35 —	70 —		
	263	1	" " 10 K^o 45 —	45 —		
				382 —		
			15 p. c.....	57 30		
						324 70
			Caisse & Emballage.....			1,111 90
						22 10
159	617	2	forceps tailles, 30 —	60 —		1,134 —

618	3	" " , 18 —	54 —	
619	1 douz.	Pinces oesophag	66 —	
620	1	" "	54 —	
621	1 douz.	Pinces contre coude	66 —	
622	1	" " droisees 9°	48 —	
623	1	" " " 8°	42 —	
624	1	" " non croisees 9° bouts layes	38 —	
625	1 douz.	Pinces non croisees 9° bouts etroits	36 —	
626	1 douz.	Pinces a erigne	42 —	
627	1	" " a polype	34 —	
628	3	" " croises 6°, 27 —	81 —	
629	3	" " " 5½° 27 —	81 —	
630	3	" " " 5° 24 —	72 —	
631	3	" " " 4½° 24 —	72 —	
632	3	" " a Erigne de Rob, 36 —	108 —	
633	1 douz.	Pinces oblique	66 —	
634	½	" " de Listau, 120 —	60 —	
635	3	" Conteaux a amputat 48	— 144	
			1224 —	
169	3 douz.	Pessaires, 8 —	24 —	
		12 p. c	2 90	
			— 21	10
69	2 douz.	Bandages anglais, 84 .... —	168 —	
		26 × 2 p. c.	44 50	
				123 50
313	18	Gros. Sondes & Bougies. 18 —	324 —	
		5 p. c.	16 20	
				307 80
266	6 douz.	Bandages a cremaillere, 27 — .. droit gauche	162 —	
826 12		" Sondes œsophagiennes, 4 25	51 —	
615	1/6	" Bandages, 30 —	5 —	
616	1/6	" " 30 —	5 —	
				233 —
807	25 douz.	Suspensoirs, 10 —	250 —	
				250 —
349	2 Ko 055	Tubes, 33 —	67 80	
613	1 " 090	" 33 —	35 95	
367	3	Pessaires doubles boules, 14 —	42 —	
368	3	" " cuvette, 14 —	42 —	
147	2 douz.	Clysoirs, 72	144 —	
371	2	" " boule, 48 —	96 —	
			427 75	
		40 × 2 p. c.	176 25	
				251 50

312	3 douz. Ventouses moyen, 18 —	54 —		
611	1 Tire mamelons la douz, 30 —	2 50		
612	1 Ventouse gd. modele " 30 —	2 50		
		59 —		
	5 p. c.	2 95		
			56	05
355	1 Machova adulte avec arteres.....	35 —		
356	1 " d'enfant sculptee	20 —		
		55 —		
	10 p. c.	5 50		
			40	50
48	24 douz Tourniquets, 4 —.....	96 —		
	10 p. c.	9 60		
			86	40
1,380	5 Gros. Preservatifs, 15 —.....	75 —		
	2 p. c.	1 50		
			73	50
341	5 Gros. Preservatifs caoutch, 10 —		50	—
	10 Ko morceaux de peau, 5 —		50	—
314	614 1 Clyo nouveaux modele.....	10 —		
	30 × 2 p. c.....	3 15		
			6	85
1,885	8 Tablettes de 27° c m' cajou, 12—	96 —		
	15 p. c.	14 40		
			81	60
			2,854	80
	Cartons	6 30		
	Caisse & Emballage.....	20 95		
			27	25
100	Gros. Tubes a 33 F le Ko 3d 30 — 40			
	× 2 p. c.....	1 35 1 95		
			29	20
			2,884	—

Sur "Mercury" le 16 Decemb. 1854.

F L 158 fs 1,134.—

159 2,884

2 G fs 4018 —

Certificate of Jno. G. Nicolay.

UNITED STATES CONSULATE, PARIS, FRANCE.

I, the undersigned, hereby certify that upon diligent inquiry it appears that Grossman and L. Groshols, witnesses named in the foregoing commission, are not at this time in France.

Witness my hand and the consular seal this 24th day of March, 1866.

[SEAL.] (Signed) JNO. G. NICOLAY,
U. S. Consul and Commissioner.

5241
Rec'd $2 00.

315 *Agreement.*

LOCKWOOD *vs.* MOREY *& als.* } In equity.

U. S. CIRCUIT COURT, *Massachusetts district:*

It is agreed that the name of W. N. Davis, in defendants' answer, be changed to G. N. Davis, and that the names of Dr. Calvin Ellis, of Boston, Mass., Dr. Benj. Codman, of said Boston, Chas. H. Hovey, of Roxbury, Mass., Wm. H. Finney, of Charlestown, Mass., Abel F. Farrar, of Rindge, N. H., and Lewis Feuchtwanger, Thos. F. Green, John Milhau, Louis Leroy, and Joel Giles, of New York, N. Y., be added to list of persons alleged in defendants' answer to have prior knowledge; and that the place of Cambridge, Mass., be added to the list of places where said invention was alleged in said answer to have been known and used, all of said persons, except John Milhau, having been examined by defendants without objection of complainants.

CAUSTEN BROWNE,
Solicitor for Complainant.
BOUTWELL & BADGER,
Solicitors for Defendant.

(Attest: N. A. PARKS, *Ex'r.*)

316 *Exhibits for complainant.—I. a. N. A. P. Ex'r.—The U. States Patent Office.*

To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the file-wrapper and contents in the matter of the letters patent granted C. H. Davidson (Assignee of C. H. & H. E. Davidson,) March 31, 1857, No. 16,956.

In testimony whereof, I, Thos. C. Theaker, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

[SEAL.] T. C. THEAKER.

No. 16,956.
Chas. H. Davidson & Herman E. Davidson ass'ors to Chas. H. Davidson
Of Charlestown
County of Middlesex
State of Massachusetts.
Syringe
Oath renewed
Rec'd April 2nd 1856
Petition
Affidavit
Specification
2 Drawings
3 Model
1 Cert. dep. $30 April 2nd, 1856,
317 Cash.
Examined L. D. Gale 20 Mar., '57.
2. Issue H. McCormick, March 21, '57.
Patented Mar. 31, 1857.
Recorded vol. 76, page 389, July 29, '56.
MERRIAM & CROSBY,
Boston, Suffolk Co., Mss.

Rep't to ex'm'r 16 April, '56.
1. Rejected 17 " "
2. 3. Sp'n to app'l't 26 " "
4. " " 7 May "
5. 6. Rejected II. 27 " "
Of commissioner, 1 Augus, 1856.
7. 8. 9. 10. 11. 12. Interference declared with A. C. Garratt (3,571.) day of hearing 1st Monday in November, 1856; 2 August, 1856.
13. 14. 15. Hearing postponed to the second Wednesday in November, '56. 10 Nov., '56.
16. Decision of commissioners in favor of applicant, 12 Nov., '56.
17. Limit of appeal 15 Dec'r, 1856. 14 Nov'r, 1856.
18. Letter 30 Dec'r, 1856.
Improved enema syringe.

Petition.

To the Commissioner of Patents:

The petition of Charles H. Davidson, of Charlestown, in the county of Middlesex, and Herman E. Davidson, of Gloucester, in the county of Essex, both in the State of Massachusetts, respectfully represents: That your petitioners have invented an improved injecting syringe, which they verily believe has not been known or used prior to the invention thereof by your petitioners. They therefore pray that letters patent of the United States may be granted to them therefor, vesting in them and their legal representatives, the exclusive

318 right to the same, upon the terms and conditions expressed in the Act of Congress in that case made and provided, they having paid thirty dollars into the treasury, and complied with the other provisions of said act:

And they hereby appoint Merriam and Crosby, of Boston, in the county of Suffolk, and State of Massachusetts, their attorneys, to solicit and obtain said patent for them, and to receive, and in their name receipt for, any and all sums of money which may become due to them for or on account of any matter or thing pertaining to said patent, with full power to do any and all things necessary and proper in their behalf for that purpose.

CHS. H. DAVIDSON.
HERMAN. E. DAVIDSON.

Oath.

COUNTY OF SUFFOLK,
State of Massachusetts, ss:

On this twenty-eighth day of March, 1856, before the subscriber, a justice of the peace for said county, personally appeared the within named Chs. H. Davidson, and made solemn oath that he verily believes himself to be the original and first inventor, together with the within-named Herman E. Davidson, of the within-described syringe; and that he does not know or believe the same was ever before known or used; and that he is a citizen of the United States.

J. B. CROSBY,
Justice of the Peace.

Filed 26 May, 1856.

COUNTY OF ESSEX,
State of Massachusetts, ss:

On this 17th day of May, 1856, before the subscriber a justice of the peace for said county, personally appeared Herman E. Davidson and made solemn oath that he verily believes himself to be the original and joint inventor with Charles H. Davidson, of the improved syringe as described and set forth in their amended specifica-
319 tion; and that he does not know that the same was ever before known or used; and that he is a citizen of the United States.

A. PRESSON,
Justice of the Peace.

COUNTY OF SUFFOLK,
State of Massachusetts, ss:

On this 21st day of May, 1856, before the subscriber, a justice of the peace for said county, personally appeared Charles H. Davidson and made solemn oath that he verily believes himself to be the original and joint inventor with Herman E. Davidson of the improved syringe, as described and set forth in their amended specification; and that he does not know or believe that the same was ever before known or used; and that he is a citizen of the United States.

J. B. CROSBY,
Justice of the Peace.

To whom it may concern:

Be it known that we, Charles H. Davidson, of Charlestown, in the county of Middlesex, and Herman E. Davidson, of Gloucester, in the county of Essex, both in the State of Massachusetts, have invented a new and improved syringe, and we do hereby declare the following to be a clear, full, and exact description thereof, taken in connection with the accompanying drawing, which is a view of our improved syringe, with the valve boxes represented in section. Similar letters on the drawing refer to similar parts.

The nature of our invention consists in the combination of an elastic sac or hollow bulb, flexible tubes, valve boxes, and valves; the whole suitably arranged and adapted to the purpose of eduction and injection.

To enable others, skilled in the art, to make and use our invention, we will proceed to describe its construction and operation. (A) is a hollow bulb or sac made of India rubber or any suitable material, of sufficient elasticity to recover its form when compressed; the ends of this bag or sac are coupled to long flexible tubes (B) (C), to the outer extremities of which the valve boxes (E) (F) are attached. The valve box (E) contains a valve (b) opening outward, and the other (F) a valve (c) opening inward.

320 The terminations of the valve boxes may be of any shape adapted to the service required of them; the termination of the valve box (F) is arranged for the eduction, and that of the valve box (E) for the injection pipe of a pump or syringe for administering an enema.

The operation of this instrument is as follows: Immerse the end of the eduction tube in the enema, compress the bulb with the hand, which will expel the air from within; then releasing the grasp of the hand, the bulb will recover its form by virtue of its elasticity, and the partial vacuum thus formed will be filled by the enema. Now insert the injection pipe and repeat the operation of compressing the bulb until the required quantity of the enema is administered.

We prefer the spheroidal shape for the bulb, as with that shape a better effect is obtained from the grasp of the hand than with any other.

The advantages of our invention are, that its parts are all easily accessible for cleaning and repairs; any required form of injection or eduction pipe can be fitted to the instrument; any person not physically disabled can use the instrument without assistance from a second person.

To those cases where patients cannot be moved without causing them great pain, this instrument is peculiarly adapted, as its flexibility and construction allow it to be used in any position of the patient, instrument, or vessel containing the enema. The strains or wrenching which cannot be avoided, even by the most careful operator, when a rigid syringe is used, with the pain occasioned thereby to the patient, are by the use of our instrument avoided.

Having described our invention, what we claim as new and desire to secure by letters patent of the United States, is the combination of

318 right to the same, upon the terms and conditions expressed in the Act of Congress in that case made and provided, they having paid thirty dollars into the treasury, and complied with the other provisions of said act:

And they hereby appoint Merriam and Crosby, of Boston, in the county of Suffolk, and State of Massachusetts, their attorneys, to solicit and obtain said patent for them, and to receive, and in their name receipt for, any and all sums of money which may become due to them for or on account of any matter or thing pertaining to said patent, with full power to do any and all things necessary and proper in their behalf for that purpose.

CHS. H. DAVIDSON.
HERMAN. E. DAVIDSON.

Oath.

COUNTY OF SUFFOLK,
State of Massachusetts, ss:

On this twenty-eighth day of March, 1856, before the subscriber, a justice of the peace for said county, personally appeared the within named Chs. H. Davidson, and made solemn oath that he verily believes himself to be the original and first inventor, together with the within-named Herman E. Davidson, of the within-described syringe; and that he does not know or believe the same was ever before known or used; and that he is a citizen of the United States.

J. B. CROSBY,
Justice of the Peace.

Filed 26 May, 1856.

COUNTY OF ESSEX,
State of Massachusetts, ss:

On this 17th day of May, 1856, before the subscriber a justice of the peace for said county, personally appeared Herman E. Davidson and made solemn oath that he verily believes himself to be the original and joint inventor with Charles H. Davidson, of the improved syringe as described and set forth in their amended specifica-
319 tion; and that he does not know that the same was ever before known or used; and that he is a citizen of the United States.

A. PRESSON,
Justice of the Peace.

COUNTY OF SUFFOLK,
State of Massachusetts, ss:

On this 21st day of May, 1856, before the subscriber, a justice of the peace for said county, personally appeared Charles H. Davidson and made solemn oath that he verily believes himself to be the original and joint inventor with Herman E. Davidson of the improved syringe, as described and set forth in their amended specification; and that he does not know or believe that the same was ever before known or used; and that he is a citizen of the United States.

J. B. CROSBY,
Justice of the Peace.

To whom it may concern:

Be it known that we, Charles H. Davidson, of Charlestown, in the county of Middlesex, and Herman E. Davidson, of Gloucester, in the county of Essex, both in the State of Massachusetts, have invented a new and improved syringe, and we do hereby declare the following to be a clear, full, and exact description thereof, taken in connection with the accompanying drawing, which is a view of our improved syringe, with the valve boxes represented in section. Similar letters on the drawing refer to similar parts.

The nature of our invention consists in the combination of an elastic sac or hollow bulb, flexible tubes, valve boxes, and valves; the whole suitably arranged and adapted to the purpose of eduction and injection.

To enable others, skilled in the art, to make and use our invention, we will proceed to describe its construction and operation. (A) is a hollow bulb or sac made of India rubber or any suitable material, of sufficient elasticity to recover its form when compressed; the ends of this bag or sac are coupled to long flexible tubes (B) (C), to the outer extremities of which the valve boxes (E) (F) are attached. The valve box (E) contains a valve (b) opening outward, and the other (F) a valve (c) opening inward.

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The operation of this instrument is as follows: Immerse the end of the eduction tube in the enema, compress the bulb with the hand, which will expel the air from within; then releasing the grasp of the hand, the bulb will recover its form by virtue of its elasticity, and the partial vacuum thus formed will be filled by the enema. Now insert the injection pipe and repeat the operation of compressing the bulb until the required quantity of the enema is administered.

We prefer the spheroidal shape for the bulb, as with that shape a better effect is obtained from the grasp of the hand than with any other.

The advantages of our invention are, that its parts are all easily accessible for cleaning and repairs; any required form of injection or eduction pipe can be fitted to the instrument; any person not physically disabled can use the instrument without assistance from a second person.

To those cases where patients cannot be moved without causing them great pain, this instrument is peculiarly adapted, as its flexibility and construction allow it to be used in any position of the patient, instrument, or vessel containing the enema. The strains or wrenching which cannot be avoided, even by the most careful operator, when a rigid syringe is used, with the pain occasioned thereby to the patient, are by the use of our instrument avoided.

Having described our invention, what we claim as new and desire to secure by letters patent of the United States, is the combination of

an elastic sac with flexible tubes terminated with suitable valve cases and valves, the whole operating together substantially in the manner and for the purpose set forth.

CH'S H. DAVIDSON.
HERMAN E. DAVIDSON.

Witnesses for C. H. D.:
J. B. CROSBY.
N. C. LOMBARD.
Witnesses for H. E. D.:
A. PRESSON.
C. Hayes.

321 COUNTY OF ESSEX, *State of Massachusetts, ss:*

On this 29th day of March, 1856, before the subscriber, a justice of the peace for said county, personally appeared the within-named Herman E. Davidson, and made solemn oath that he verily believes himself to be, together with the within-named Charles H. Davidson, the original and first inventor of the within-described syringe; and that he does not know or believe the same was ever before known or used; and that he is a citizen of the United States.

A. PRESSON.
Justice of the Peace.

Hon. Commissioner of Patents:

We hereby request leave to amend our specification by striking out of the first page thereof the whole of the nature of the invention, and substituting in its place the following: The nature of our invention consists in the combination of a hollow elastic bulb, of a prolate spheroidal shape, with flexible tubes and metallic valve boxes, containing valves arranged for the purpose of eduction and ejection, when the elastic tubes and metallic valve boxes are attached to such an elastic bulb or sac, in, or nearly in, its greatest axial line. The prolate spheroidal form of sac is the one best adapted to produce the greatest effect from the grasp of the hand, by which this instrument is operated; by so combining it with the tubes and valve boxes that they shall be in, or nearly in, the greatest axial line of the sac, the fluid is passed through the instrument in the most direct manner and with the least loss of effect possible by friction. We also request leave to amend our specification by striking out of its fourth page the whole of the claim, and inserting after the word "is," found in the second line of the same page, the following: The combination of the prolate spheroidal-shaped elastic sac, with flexible tubes terminating in valve boxes, containing valves arranged for the purpose of eduction and ejection, when the sac tubes and valve boxes are in, or nearly in the same axial line, the whole operating together substantially in the manner and for the purpose set forth.

MERRIAM & CROSBY,
Attorneys for C. H. & H. E. Davidson.

Filed 7 May, 1856.

322 APRIL, 1856.

GENTLEMEN: Upon examination of your application for patent for a syringe, your device has been found anticipated by John Pearshall and David Gilbert's enema syringe, patented May 22, 1833, a description of which you will find in the Franklin Journal, second series, vol. 16, p. 321. Your claim is rejected.

Messrs. CHAS. H. DAVIDSON and HERMAN E. DAVIDSON,
Care of Merriam & Crosby, Boston., Mass.

BOSTON, *April 23d*, 1856.

Hon. Commissioner of Patents:

SIR: We have to acknowledge the receipt of the official letter of the 17th inst., containing the rejection of the application of Messrs. Charles H. & Herman E. Davidson.

In view of the reference, we beg leave to have the papers returned to us, that we may so amend the specification and claim as to present the novel feature of the invention.

Very respectfully, yours, &c.,
MERRIAM & CROSBY,
For C. H. & H. E. Davidson.

APRIL, '56.

Agreeable to yours of the 23d inst., you will find enclosed the specification and your rejected applica'n for pat't for a syringe.

CHS. H. & HERMAN E. DAVIDSON,
Care of Merriam & Crosby, Boston, Mass.

MAY, 1856.

It being supposed from the amendments sent by you to your specification of a syringe, that you wish to have your case re-
examined, your specification is again returned to you with the
323 remark that, agreeable to the enclosed rules, a letter of yours applying for re-examination and containing the argument against the decision of the office and the renewal of your oath, are required.

Messrs. CHAS. H. & HERMAN E. DAVIDSON,
Care of Merriam & Crosby, Boston, Mass.

BOSTON, *May 22d*, 1856.

To the Hon. Commissioner of Patents:

SIR: In reply to your letter of the 7th inst., relating to the application of Messrs. C. H. & H. E. Davidson, we enclose the oaths required, together with their specification and its amendments, and state that we have examined the description of Messrs. Pearshall & Gilbert's enema syringe referred to, as contained in the Franklin Journal.

Prior to making application for letters patent, we had examined the description above mentioned, and concluded that the tubes were metallic, and that, consequently, so far as that description was concerned, the combination in our original claim was new.

Upon the rejection of it by the office, we presumed that we had been mistaken in our apprehension of the construction of the syringe referred to, and now request that the amendments placed on file May 7th, 1856, may be allowed and the case re-examined.

Very respectfully, yours, &c.,

MERRIAM & CROSBY,
Attorneys for C. H. & H. E. Davidson.

(3573.)

MAY, 1856.

GENTL'N: The amended claim of your rejected application for patent for an enema syringe has been re-examined, due consideration being had of yours of the 22d inst. The prolate spheroidal shape of your elastic sac, and the position of said sac with regard to the flexible tubes bringing the latter in the axial line of the sac, appear, when compared with the reference given you, but as distinctions without a difference. Your allegation that the above form
324 and position of the elastic sac are the best adapted to produce the greatest effect, is not consistent with the laws of hydrostatics. Liquids propagate any pressure exercised upon them in all directions, independent of the form of the receptacles.

☞ The decision of the 17th ult. is therefore adhered to.

Messrs. CHAS. H. DAVIDSON and HERMAN R. DAVIDSON,
Care of Merriam & Crosby, Boston, Mass.

BOSTON, *June 14th*, 1856.

Hon. Commissioner of Patents:

SIR: The official letter of May 27th, relating to the case of Messrs. C. H. & H. E. Davidson, was duly received.

Before bringing the case to the final action of the office we request that the original specification and the amendments may be forwarded to us for examination.

Very respectfully, yours, &c.,

MERRIAM & CROSBY,
39 *State st.*

PATENT OFFICE, 16 *June*, '56.

SIRS: By your request of the 14th inst. the specification of your application for a patent for a syringe is herewith enclosed.

Respectfully.

C. H. & H. E. DAVIDSON,
Care of Merriam & Crosby, Boston.

CHARLESTOWN, MASS., *July 25th*, 1856.

Hon. CHAS. MASON, *Commissioner of Patents*:

SIR: In the matter of our application for patent for improvement on injecting syringes, now on file in your office, we request that you will recognize as our agent and attorney, A. Gregory, of Washington, D. D., whom we hereby authorize and empower to argue our last

amended claim, and in general to demand and exercise all the rights and privileges that your petitioners would be entitled to if personally present and acting in the premises.

CHS. H. DAVIDSON.
HERMAN E. DAVIDSON.

325 *Appeal to the commissioner.—C. H. Davidson & H. E. Davidson's application for patent for improvement on enema or injecting syringes, filed April*, 1856.

To the Hon. CHA'S MASON, Commissioner of Patents:

SIR: It is my duty to solicit your honor's personal review of the case above cited and of the actions already had thereon by your office, with the view that the present decision may be reversed as the circumstances of the case, it is respectfully submitted, fully justify the belief should be done, for the following reasons:

Application for patent was first made by Messrs. Davidson in April of the present year. This application was rejected April 17th, 1856: and again rejected on the 27th May last.

Both rejections were based on the same ground, that is so far as the same single reference was considered applicable by your office, notwithstanding that the claim as last submitted was a material modification of the first, and confined the invention to an important feature certainly not found in the reference quoted by your office; nor does that reference, as respectfully suggested by Messrs. Davidson's former agents in letter on file, cover the same flexible construction to which Messrs. Davidson's claim as first submitted related. However, the claim as first submitted, covering a broader ground, has been, and doubtless properly so, abandoned, and the amended claim upon which your honor's decision is asked, as being the claim upon which the last office action was made, reads thus:

"The combination of the prolate spheroidal shaped elastic sac with flexible tubes terminating in valve-boxes containing valves arranged for the purpose of eduction and ejection, when the sac-tubes and valve-boxes are in or nearly in the same axial line, the whole operating together substantially in the manner and for the purposes set forth."

Now your honor will observe that this claim includes first a combination, and secondly a conditional arrangement of the parts forming that combination, the whole, not separately, but in connection.

326 The prolate spheroidal shaped elastic sac of itself is not claimed, though such shade has great advantages as has already been pointed out to your office, and the reference given has no allusion to such shape.

Nor are the flexible tubes in connection with the elastic sac claimed unconditionally as regards the arrangement of said tubes and their valves in relation to the sac—"in the same axial line"—though here again the reference would not imply the use of flexible tubes at all; and thus it is that the conditional claim last presented by Messrs.

Davidson embraces most distinctly nothing more than what is clearly novel, at least so far as the reference is concerned.

The reference, Messrs. Pearshall & Gilbert's enema syringe, patented May, 1833, is thus described in vol. 16 or 12 of the Franklin Journal, as referred to by your office. This syringe "is made in part of pewter, and in part of a caoutchouc bag; the portion made of pewter is somewhat in the form of a common syringe, but with the body part short and having a tube at each end; on the middle of the body part there is a small opening with a neck to which the caoutchouc bag is is to be attached, which thus stands at right angles with the body of the syringe."

This description implies then this, and nothing more: a syringe with an inflexible metal body (a) with metal and inflexible or it may be flexible (though there is no evidence to show it) eduction and ejection valve tubes (b,) and a flexible bag (c,) (of no specified particular shape,) attached by neck "at right angles" to the body—not in the axial line of the tubes, &c.

This reference, therefore, it is respectfully submitted, in no ways touches the conditional claim last made by Messrs. Davidson, as before quoted and explained; and, so far as details are concerned, this your office tacitly admits in letter dated 27th of May last, but adds, by way of objection, that "the prolate sypheroidal shape of your elastic sac, and the position of such sac with regard to the flexible tubes bringing the latter in the axial line of the sac, appear, when compared with the reference given by you, but as distinction without a difference. Your allegation that the above form and position of the elastic sac are the best adapted to produce the greatest effect is not consistent with the laws of hydrostatics. Liquids propagate any pressure exercised upon them in all directions, independently
327 of the form of the receptacles." The argument thus advanced by your office was in reply to an able and apparently clear exposition made of the difference advantages of Messrs. Davidson's arrangement by their former agents, which being contained in letter on file, and the specification and claim being so distinct, it would be superfluous in me and only trespassing unnecessarily on your honor's time to do anything more than endorse that exposition with my humble opinion, calling, however, your honor's attention specially to the following facts or considerations.

(1st.) The prolate spheroidal form of the sac is a "distinction" with a "difference" and an advantageous one. It is an advantageous one. It is a form more convenient to the grasp of the hand and more easy of action as regards suction and eduction than a mere "bag" as in Pearshall & Gilberts.

(2nd.) The arrangement in an axial line of the flexible tubes, and their valves, with the flexible sac, is of prime importance to the rapid and easy action of the instrument, just in proportion as a fluid may be drawn and forced in a straight line with greater facility than it can be through angular bends as every engineer is aware, and the

right angled action of the "bag" or sac in the reference is obviously less direct, quick or easy than in the axial arrangement of the sac and tubes in Messrs. Davidson's arrangement; and, as regards the theory advanced by your office on this head, there undoubtedly is an error, for the instrument is not one that comes within the range of "hydrostatics" which merely relates to fluids at rest—hence the allusion to "pressure,—but, as in its action it is confined to a fluid in motion, the argument advanced by the applicants, or their former agents, should have been viewed under the laws which relate to hydraulics, when the improved effect and advantages spoken of as regards the prolate spheroidal shape of the sac and axial line of the tubes, &c., with it (both novel) must have been admitted.

(3rd.) That where the patient is called upon (of necessity) to use the instrument without the aid of a second party, aught that will tend to render the action and use of it easier, and more direct or quicker, is worthy of great consideration, and the prolate
328 spheroidal shape of the sac in connection with the flexible tubes, &c., in the same axial line must of necessity do so.

(4th.) That the combination claimed, of a particular and advantageously shaped sac with flexible tubes conditionally arranged (in the axiall ine) in relation to said sac, is in no ways met by or conflicts with the reference.

For these reasons, then, the present decision of the office is asked to be reversed, as appears only just and proper, and if, in the multitude of business which presses on your honor's attention, a full consideration of the details can be had by your honor, it is confidently believed that the present refusal of a patent on the claim last presented must and will be done away with, or that reasons more satisfactory and to the point than the present ones will be given.

Remaining, sir, very respectfully, y'rs, &c.,

A. GREGORY,
Attorney for Messrs. C. H. & H. E. Davidson, in matter of said app.

Washington, D. C., July 30th, 1856.

Application of Chas. H. & Herman E. Davidson.—Improved syringe.

The present claim is to a combination of the prolate spheroidal shaped elastic sac, with the flexible tubes terminating in valve boxes, &c. There does not seem patentable combination set forth in the specification. Admitting (as it does) that the sac and the flexible tubes are both old devices, I see no special advantage resulting from their being united in the same instrument sufficient to sustain a patent.

Stress is, however, laid upon the fact that the axis of the sac is placed in line with that of the flexible tubes; I do not think the utility of such an arrangement would of itself be sufficient to justify the granting of a patent, in the absence of any proof of the practical utility of that arrangement.

But while I am unwilling to allow a patent to the applicants
329 for their contrivance regarded as a machine, I think it would

have been patentable if claimed as a new commodity or manufacture. This is in reality what they are aiming at, still, they do not shape their claim in the proper manner to attain that precise object. The only doubt in my mind is whether I should form the parties into making a new application or allow them to take their patent in its present shape at their own risk.

As the invention is sufficiently set forth, and as there is some reason to suppose that this is substantially of the kind above suggested, and especially as they can correct their error, if necessary, by a reissue more readily and economically than by a new application, I am inclined to allow the patent as claimed, which is accordingly done.

C. MASON, *Com.*

July 31, 1856.

Application of Chas. H. & H. E Davidson.—Improved syringe.

Patent allowed for reasons on file.

C. MASON, *Com.*

July 31, 1856.

Caveat.—III.—N. A. P., ex'r.

To the Commissioner of Patents:

The petition of Charles H. Davidson, of Charlestown, Massachusetts, Herman D. Davidson, of Gloucester, Massachusetts, respectfully represents, that they have made certain improvements in injecting syringes, and that they are now engaged in making experiments for the purpose of perfecting the same, preparatory to their applying for letters patent therefor. They therefore pray that the subjoined description of their invention may be filed as a caveat, in the confidential archives of the Patent Office, agreeably to the
330 provisions of the act of Congress in that case made and provided; they having paid twenty dollars into the Treasury of United States, and otherwise complied with the requirements of the said act.

CHS. H. DAVIDSON.
HERMAN E. DAVIDSON.

Charleston, Jan'y 8, 1853.

Our improvement in injecting syringes, consists in using a spheroidal cylindrical or globular elastic sac or ball, to which are attached and communicating with it flexible tubes or pipes; to the ends of these pipes are connected valve boxes, with suitable valves therein, so that by the alternate action of compression and expansion, and desirable quantity of injection may be administered without removing the instrument to refill it, and it may be operated without the aid of a second person, and is so constructed that it can be easily taken apart for the purpose of cleansing or repairing it and easily replaced. To accomplish which we provide a sac, 0, (see accompanying drawings,) of India rubber, or other elastic material of a spheroidal, cylindrical or globular form, its opposite ends (when a spheroi-

dal, or cylindrical, form is used, and opposite sides of a globular, terminating in flexible pipes, of any convenient length, one of which *A*, we call the induction pipe, and may be, say fourteen inches in length, the other *B*, we call the injection pipe, and may be ten inches in length, connected with the ends of these flexible pipes so as to be removable at pleasure, are metallic valve boxes, *C*, *D*, denominated respectively, the induction and injection valve boxes; when the pipes are of India rubber this connection may be made by stretching the pipe over a tube projecting from that end of the valve box. In the valve boxes are valves constructed in any of the known ways, the valve in the induction pipe opening inwards, and the one in the injection valve box opening outward; through the bottom of the induction valve box, and communicating with it, is a conical hole for the purpose of fixing in a segar when it is required to inject tobacco smoke; or instead it may be perforated with small holes, making a strainer; the bottom is also provided with legs or support a, a, a, so that when it rests on the bottom of a vessel containing fluid its passage may be unobstructed; at the outer end of the injection valve box, is attached the anal tube b, or the vaginal tube c, fig. 2, either of which may be fixed to the junction valve box. Its operation is as follows: introduce the anal or vaginal tube, as the case may be, the pipe being of such length that the sac o, can be conveniently grasped by the hand and placing the induction valve box in the vessel containing the liquid to be administered, now by compressing the sac with the hand, a portion of the air is forced through the injection pipe, valve box, and tube box c, then by relieving the commission the sac expands by its elasticity to its original form, causing a partial vacuum therein, and the external atmospheric pressure causing the fluid to flow into the sac, and by repeating the compression the fluid is forced out through the injecttion tube thus by a continued repetition of the operation of compression and expansion, any desired amount of injection may be administered, either by the persons themselves or by another; after use the valve boxes may be detached from the flexible pipes, so that they and the sac may be thoroughly cleansed and dried; the valve boxes being made so as to take apart at f, g, they may also be cleaned or repaired, and the whole may be put together again ready for further use.

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CHS. H. DAVIDSON.
HERMAN E. DAVIDSON.

Witnesses for C. H. Davidson:
THOMAS W. SILLOWAY.
M. H. MERRIAM.

Witnesses for Herman E. Davidson:
JOSEHH GARLAND.
CLARISA HAYES.

Communications may be addressed to Chas. H. Davidson, Charlestown, Mass.

Assignment from H. E. & C. H. Davidson to Ch. H. Davidson.—IV.—N. A. P., ex'r.

Whereas we, Herman E. Davidson, of the town of Gloucester, in the county of Essex, and State of Massachusetts, and Charles H. Davidson, of the city of Charlestown, in the county of Middle-
332 sex, State aforesaid, have invented certain new and useful improvements in surgical syringes, for which application for letters patent of the United States has been made.

And whereas the said Charles H. Davidson has agreed to purchase from us all the right, title, and interest which we have, or may have in consequence of the grant of letters patent therefor, and has paid to us the said Herman E. & Charles H. Davidson, the sum of two thousand dollars, the receipt of which is hereby acknowledged.

Now this indenture witnesseth, that for and in consideration of the said sum to us paid, we have assigned and transferred, and do hereby assign and transfer to the said Charles H. Davidson, the full and exclusive right to all the improvements made by us, as fully set forth and described in the specification which we have prepared and executed, preparatory to the obtaining of letters patent therefor.

And we do hereby authorize and request the Commissionor of Patents, to issue the said letters patent to the Charles H. Davidson, as the assignee of all our right and title thereto, for the sole use and behoof of the said Charles H. Davidson, and his legal representatives.

In testimony whereof, we have hereunto set our hands and affixed our seals this thirteenth day of October, A. D. eighteen hundred and fifty-six.

[SEAL.] HERMAN E. DAVIDSON.
[SEAL.] CHARLES H. DAVIDSON.

Signed, sealed, and delivered in presence of—
Witnesses for H. E. Davidson:
A. PRESSON.
SAM'L KIMBALL.

Witnesses for C. H. Davidson:
M. H. MERRIAM.
GORDON MCKAY.

COMMONWEALTH OF MASSACHUSETTS, *Essex, ss:*

GLOUCESTER, *October 13th*, 1856.

Then personally appeard Herman E. Davidson, and acknowledged the within instrument, by him subscribed, to be his free act and deed, before me.

A. PRESSON,
Justice of the Peace.

Received and recorded Oct. 18, 1856.

333 *Assignment from Ch. H. to H. E. Davidsan.—V. N. A. P. Ex'r.*

Whereas I, Charles H. Davidson, of Charlestown, in the county of Middlesex, and State of Massachusetts, by a deed of assignment dated the thirteenth day of October, A. D. one thousand eight hundred and fifty-six, am the owner of certain letters patent of the United States for an improved "Enema Syringe," which letters patent bear date the thirty-first day of March, A. D. one thousand eight hundred and fifty-seven; and whereas, Herman E. Davidson, of Gloucester in the county of Essex, and State of Massachusetts, is desirous of purchasing my interest therein:

Now, this indenture witnesseth: that for and in consideration of the sum of one thousand dollars to me in hand paid, the receipt of which I hereby acknowledge, I have assigned, sold, and set over, and do hereby assign, sell, and set over unto the said Herman E. Davidson, all the right, title, and interest which I have in said letters patent, as secured to me by the assignment aforesaid; the same to be held and enjoyed by the said Herman E. Davidson, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof, I hereunto set my hand and affix my seal this the twentieth day of September, A. D. one thousand eight hundred and fifty-nine.

[SEAL.] CHARLES H. DAVIDSON.

Sealed and delivered in presence of—
H. D. LOCKWOOD.
L. LINCOLN THAXTER.

U. S. PATENT OFFICE.

Received September 22, 1859, and recorded in Liber M^{s}, page 11 of transfers of patents. In testimony whereof, I have caused the seal of the patent office to be hereunto affixed.

WM. D. BISHOP,
Commissioner of Patents.

334 *Assignment from H. E. Davidson to H. D. Lockwood.—VI. N. A. P., Ex'r.*

Know all men by these presents, that I, Herman E. Davidson, of Gloucester, in the county of Essex and Commonwealth of Massachusetts, for and in consideration of one dollar lawful money of the United States, and other valuable considerations to me paid by Hamilton D. Lockwood, of Charlestown, in the county of Middlesex and Commonwealth aforesaid, the receipt whereof is hereby acknowledged, have assigned, sold, and set over, and do hereby assigns, sell, and set over, to the said Lockwood, his heirs and assigns, all right, title, and interest whatsoever in, to, and under letters patent of the United States for

improvement in surgical syringes, jointly invented by myself and Charles H. Davidson, now deceased, which letters patent are granted to said Charles H. as assignee, and bear date March 31st, 1857, and have been assigned to me by deed of said Charles H., dated 20th September, 1859, and in, to, and under any re-issue thereof.

To have and to hold to the said Lockwood, his heirs and assigns, to his and their own use and behoof, to the full end of the term for which said letters patent are now granted.

Witness my hand and seal this 18th day of November, A. A. 1862.

[SEAL.] HERMAN E. DAVIDSON.

[Stamp.]

U. S. PATENT OFFICE.

Received and recorded Feb. 10th. 1865, in Liber Q[7], page 193, of transfer of patents. In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] D. P. HOLLOWAY,
Com'r of Patents.

335 UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, John G. Stetson, clerk of the Circuit Court of the United States for the first circuit and district of Massachusetts, hereby certify that the foregoing is a true copy of the record, and of all proceedings in the cause of Hamilton D. Lockwood, complainant in equity, *vs.* David B. Morey *et al.*, respondents, in this court determined, including all the evidence filed therein, and used at the hearing of said cause.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at Boston, in said District, this fourteenth day of November, A. D. 1857, and of the independence of the United States, the ninety-second.

[SEAL.] JOHN G. STETSON, *Clerk.*

[5 ct. stamp.]

336 *Bond.*

Know all men by these presents, that we, David B. Morey, of Malden, William C. Smith, of Charlestown, an Francis B. Richardson, of Boston, all in the State and district of Massachusetts, as principals, and Samuel Slocomb, of Cambridge, William L. Libby, of Newton, Alfred Perkins, of Reading, F. O. Dewey, of Reading, Samuel B. Locke, of Andover, and O. H. P. Smith, of Charlestown, all in said State and district, as sureties, holden and stand firmly bound and obliged unto Hamilton D. Lockwood, of Charlestown, in said district, in the full and just sum of eighteen thousand dollars, to be paid unto the said Hamilton D. Lockwood, his executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated the fourteenth day of June, in the year of our Lord one thousand eight hundred and sixty-seven.

The condition of this obligation is such, that whereas lately at a Circuit Court of the United States, holden at Boston, within and for the district of Massachusetts, on the fifteenth day of May last past, in

a suit in equity depending in said court, wherein said Hamilton D. Lockwood was complainant, and said David B. Morey, William C. Smith, and Francis B. Richardson, were respondents, a decree was entered against the said Morey, Smith, and Richardson, respondents, and the said respondents have, in due form of law, taken an appeal from said decree to the Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, for the purpose of reversing the said decree. Now, if the said respondents shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make good their said appeal, then the above obligation is to be void, else to remain in full force and virtue.

[SEAL.]	DAVID B. MOREY.
[SEAL.]	WILLIAM C. SMITH.
[SEAL.]	FRANCIS B. RICHARDSON.
[SEAL.]	SAMUEL SLOCOMB.
[SEAL.]	WM. L. LIBBEY.
[SEAL.]	A. PERKINS.
[SEAL.]	F. O. DEWEY.
[SEAL.]	SAMUEL B. LOCKE.
[SEAL.]	O. H. P. SMITH.

Wittnesses:

GEO. S. BOUTWELL, to D B. M.
GEORGE T. BAILEY, to W. C. S.
JAMES M. MOREY, to F. B. R.
WM. G. FLETCHER, to S. S.
F. H. WHIPPLE, to W. L. L.
A. PERKINS, jr. to A. P.
S. DEWEY, to F. O. D.
B. UNDERWOOD, to S. B. L.
SAMUEL K. HERRRICK, to O. H. P. S.

Approved:

NATHAN CLIFFORD,
Asso. Jus. Sup. C't U. S.

The sureties herein are accepted as sufficient

CAUSTEN BROWNE,
Sol'r for Lockwood.

UNITED STATES OF AMERICA, *Massachusetts District:*

I, John G. Stetson, clerk of the Circuit Court of the United States for the first circuit and district of Massachusettes, do herby certify the within is a true copy of an original bond filed in the within named cause.

Witness my hand and the seal of the said Circuit Court, this fifteenth day of November, A. D. 1867.

[SEAL.] JOHN G. STETSON, *Clerk.*

Endorsed: Sup. C't. W. S. 1867, Dec. term. No. 289. Bond. Filed 19 November, 1867.

242.
15 H. 343

Oct. 14. 1869.

Field J.

Supreme Court of the United States.

DECEMBER TERM, 1868.—No. 140.

DAVID B. MOREY AND OTHERS, Appellants,

versus

HAMILTON D. LOCKWOOD.

Appeal from U. S. Circuit Court, District of Massachusetts.

BRIEF FOR APPELLEE.

Supreme Court of the United States.

DECEMBER TERM, 1868.—NO. 140.

DAVID B. MOREY AND OTHERS, APPELLANTS,

vs.

HAMILTON D. LOCKWOOD.

APPEAL FROM U. S. CIRCUIT COURT, DISTRICT OF MASSACHUSETTS.

BRIEF FOR APPELLEE.

This is a suit in equity for an injunction to restrain infringement of reissue letters patent for an improved Enema Syringe, granted to the appellee's assignors, and for an account.

The original patent was granted to Charles H. Davidson, assignee of Charles H. Davidson and Herman E. Davidson, the inventors, March 31st, 1857.

Charles H. Davidson assigned all his interest to Herman E. Davidson September 20th, 1859.

Herman E. Davidson assigned the whole interest in the patent to the complainant November 18th, 1862.

The reissue patent was granted to the complainant April 25th, 1865.

The bill was filed August 5th, 1865.

There is a misrecital in the reissue patent. It recites that the original patent was granted to C. H. and H. E. Davidson, whereas in fact it was granted to C. H. Davidson as their assignee. But the identity of the original patent referred to is fixed by the nature of the invention, the names of the inventors, and the date of the original patent. The error is mere mis-description of a subject-matter already fully identified; the material thing being to ascertain from the reissue what patent it is that is reissued.

THE NATURE OF THE INVENTION.

The invention is *an enema syringe*, composed of a hollow bulb made of elastic material and provided with two flexible tubes, through one of which the enema is admitted into the bulb, and through the other of which the enema is expelled from the bulb, the tubes being respectively provided with valves, one for inlet and the other for outlet, the whole being so arranged that the compression of the elastic bulb shall expel the enema from it through one tube, and the release of the bulb shall permit it, by the elasticity of the material of which it is composed, to resume its shape and to be filled with the enema through the other tube, and so on.

COMPARISON OF THE ORIGINAL PATENT WITH THE REISSUE.

The original patent, the application for which was filed April 2d, 1856, shows, in the description and drawing, identically the same instrument that is described and drawn in the reissue patent.

The claim made at the time of such original application was substantially the same that is now granted by the reissue. See pp. 19, 243.

April, 1856, the Patent Office rejected such original claim as anticipated by the patent of Pearshall & Gilbert, granted May 22d, 1833, as found described in the Franklin Journal; the Patent Office record of the patent having been destroyed in the fire of 1836. See p. 245.

In fact the Pearshall & Gilbert patent, while it had an elastic bulb, had no flexible tubes, but had two metallic tubes, connected with the bulb by means of a three way piece of metal. See pp. 127, 128, and No. 5 on the first sheet of plates.

May 22d, 1856, the patent attorneys of the Davidsons wrote to the Patent Office, acquiescing in the rejection, and submitting an amended and restricted claim, on which, after some objections at the Patent Office, the original patent was finally granted.

That this limitation of claim resulted from *actual inadvertence and mistake* is proved by the testimony of Crosby, one of the attorneys who conducted the Davidsons' application.

See his answer to the 7th interrogatory, p. 127.

The Patent Office afterwards admitted and corrected its own mistake by granting the reissue patent with the claim as originally made. The exhibit for appellants, printed at p. 207, purporting to contain *part* of the proceedings in the reissue case, viz.: "The letters rejecting the application for the reissue," proves nothing to the contrary, even if it were competent to affect the construction of the patent by evidence of the correspondence between the Patent Office and the applicant.

HISTORY OF THE INVENTION.

Charles H. Davidson, one of the inventors, died in 1860. The leading witness to the history of the invention is the other inventor, his brother, Herman E. Davidson, a physician, now residing and in practice at Gloucester, Massachusetts.

Dr. Davidson testifies that in *August*, 1852, at Gloucester, the first conference between them upon the subject took place. And that in that, or in that and another a day or two later, the invention was worked out and put on paper by them jointly. The circumstances which led to the invention, and the details of their conferences upon the subject, are given minutely by Dr. Davidson.

See p. 91, direct, 9–13.

Dr. Davidson, who had been attending a patient who used a syringe with a rubber bulb and a single inflexible tube, and had observed the inconvenience of having to remove this instrument from the body of the patient from time to time, in order to refill the instrument with the enema, suggested to his brother the making of *a syringe which could supply itself with enema without being so removed.*

Charles H. Davidson, who was a machinist, thereupon devised,

and made a drawing of, a syringe in which *the elastic sac had but one opening, the two flexible tubes being coupled to it at that point, the enema entering the sac through one tube and being expelled through the other; being the same form of the invention which is adopted by the defendants in this case, and which is called in the case the "single-neck" syringe.* The bulb was more round than oval — nearly spherical — being the shape of the bulb in the syringe which the patient was then using.

See p. 93; direct, 16.

Dr. Davidson suggested the use of the oval form of bulb, and also, as a simpler and better mode of combining the parts, to have the two flexible tubes enter the sac at opposite sides; being the form in which the invention was afterwards represented in the caveat, and in the patent, and the form in which the instruments have always been made by the Davidsons and by their assignee, the appellee.

Davidson, p. 92, direct, 13–16.

Two remarks may be conveniently made here.

1. The Davidsons are clearly joint inventors of the thing now patented.

2. The "single-neck" and the "double-neck" form of the instrument alike substantially embody the invention.

Assuming for the present, the substantial identity of the thing testified to as invented in August, 1852, with the thing patented in the reissue, we return to the question of *date*.

That the month of August, 1852, was the time when the invention was contrived by the Davidsons, is settled with reasonable certainty.

Davidson, p. 91, direct, 9–12, 47, 48; cross, 15–21, 52.

For the purpose of discrediting Dr. Davidson as to the date of the invention, the appellants offer in evidence what purports to be a certified copy of his deposition given in 1857, in an interference case before the Patent Office, between his brother and himself on one part, and one Garratt on the other part.

It will be found at p. 192 that the appellee objected to the use in

evidence of this document, and we submit that it ought not to be considered:

1. Because a certified copy of a paper on the files of the Patent Office, purporting to be a deposition of a certain person, is not evidence that that person ever in fact signed and swore to any such deposition.

2. Because, if it was intended to contradict Dr. Davidson by proof that he had on a previous occasion given a deposition containing statements contradictory to what he now makes, the deposition, or those parts of it which contained the alleged contradictory matter, should have been submitted to him in his cross-examination and an opportunity given him to explain the alleged contradiction.

Conrad *vs.* Griffey, 16 Howard, 38.

But the deposition fails to discredit Dr. Davidson.

In that interference the Davidsons were applying for a patent for the particular form of syringe of which they had filed a drawing, viz., the sac with the tubes entering it at opposite ends. The file-wrapper (p. 241) shows that this interference was declared August 2, 1856, after the Davidsons had amended their original claim, so as to limit it to this form of their invention (p. 245).

They had therefore no occasion to offer any testimony except such as related to this form of syringe.

It does not appear that in that case the precise *time* in 1852 when the invention, in any form, was made, was material.

Dr. Davidson, in that deposition, speaks of the conference between himself and his brother in which the invention was produced, as having occurred in the "fall or winter of 1852."

That it was before the latter part of November, 1852, the deposition itself shows, for Dr. Davidson there states that *in the latter part of November*, 1852, he thinks, he sent his brother a drawing representing the "double neck" form of the syringe and a description of it, which identical drawing and description he then produced and put in evidence in the interference case (copies of them are in evidence for appellee in the present case).

The difference in date as to the time of the invention, if any difference existed, is not material in the present case.

The appellants, however, have themselves removed all doubt upon this point.

Dr. Davidson having been recalled (p. 279) to another matter, they cross-examine him upon this, thereby making him their own witness; and he states (p. 214, cross 5–8) that shortly after giving his testimony in the interference case, his brother brought to his mind that *the first conference took place when he* (*Charles H.*) *visited Gloucester, in the latter part of August, 1852.*

The appellants have thus introduced into the case the statement of Charles H. Davidson, in support of his brother, as to the date in question.

Dr. Davidson's description of the single-neck syringe, as described and sketched in the conference in August, 1852, is clear, and he produces a copy of the sketch, the original having been roughly made for the purposes of the conference only, and not having been preserved.

Davidson, p. 92; direct, 13; cross, 22–28.

His brother Charles, upon his return home to Charlestown, about September 1st, 1852, proceeded to make an instrument for their sister, Mrs. Delano's, use (the patient before referred to), according to the plan he had himself drawn: viz., the single-neck syringe.

As first made, it was such an instrument as is represented by the Exhibit No. 13,— p. 95; direct 31. Dr. Davidson testifies that *in October, 1852,* he wrote to his brother that he wanted to have a bed-pan made to use with this instrument, and described what he wanted.

Page 94; direct, 20, 21, 34; cross, 168.

L. H. Hayward testifies that he made for Chas. H. Davidson a bed-pan exactly answering to Dr. Davidson's description, and proves by his book that he delivered it November 13th, 1852; and he says that he had the order from *two to four weeks before the work was done.*

Page 122; direct, 3–6.

The identical bed-pan is produced, and marked Exhibit No. 8.

Hayward, p. 122; direct, 2.

Davidson, p, 94; direct, 23.

T. D. Clough testifies that he saw an instrument like Exhibit No. 13, in C. H. Davidson's shop, in the fall of 1852.

Page 117; direct, 7, 11, 12.

D. H. Smith testifies that in 1852, "three or four months" before a certain visit of his to New York, which is proved by book entry to have been in January, 1852, he saw in C. H. Davidson's shop a syringe in successful operation, like Exhibit No. 13; and that Davidson told him it was for the use of his invalid sister.

Page 138; direct, 4, 5, 6, 11–15, 18, 19, 38–42, 46; cross, 36–42, 52.

The "three-way connection" or single neck which made part of this syringe, is produced by Dr. Davidson, and identified sufficiently by D. H. Smith as having been made by himself in the fall of 1852.

Davidson, p. 94; direct, 23, 35; cross, 59–70; direct, 78.
Smith, p. 139; direct, 8, 9, 10.

It is clearly proved that the model Exhibit No. 13 correctly represents the single-neck syringe, which was made by C. H. Davidson, and that the original instrument was made before the bed-pan No. 8 was made, which is proved by book entry to have been delivered November 13th, 1852.

Davidson, p. 94; direct, 23–34, 83, 168.
Clough, p. 117; direct, 7, 11, 12.
Smith, p. 139; direct, 11, 12, 13, 38–42, 44, 45, 46; cross, 36–42, 52.

It is proved also that it was practically successful in operation.

Davidson, p. 98; direct, 62, 85.

References already given prove, in particular, that *the induction tube was flexible* (*as well as the delivery tube*), and it appears that the instrument was in fact used in several instances without any glass jar or bed-pan.

Davidson, p. 95; direct, 36–38; cross, 78–80.

Although the flexible induction tube was not necessary when the pan and jar were used, the pan and jar were as convenient for using the syringe with the induction tube flexible, as for using it with that tube inflexible; the object being to *hold the enema steadily and close to the patient*.

It has been deemed proper, for other reasons, to show that this single-neck form of syringe was invented and reduced to practice by the Davidsons in 1852. But as a matter of *date of the invention* it is not material, the evidence of the invention in the *double-neck form* also in 1852, being clear, as will now be shown.

The first suggestion of the double-neck form of the invention was made by Dr. Davidson, at Gloucester, in August, 1852.

Davidson, p. 92; direct, 13.

In September, 1852, he made a rough model, embodying this suggestion, and took it and showed it to his brother at Charlestown. It was left with him, and was not afterwards seen by Dr. Davidson.

Davidson, p. 93; direct, 14, 15.

Dr. Davidson also made, in the same year, a sketch showing this double-neck form of syringe, and sent it to his brother, with a description of it. Being unable to produce the originals, he produces copies marked Exhibits 15 and 16 respectively.

Davidson, p. 99; direct, 71–76.

It has been suggested for the appellants that Dr. Davidson had no knowledge of the invention when he saw a certain English instrument know as the *Maw* syringe in October, 1852. But the contrary appears in his answer to the 77th direct.

During the last month or two of the year 1852 Charles H. Davidson was making various experiments relating to the double-neck form of syringe, and also moulds, which were sent to New York, to the Union India Rubber Company, who cast the rubber parts by them. These moulds were composed of a mixture of antimony, tin, and other metals.

Clough, p. 117; direct, 3–19.
Smith, p. 139; direct, 20–25.
Davidson, p. 97; direct, 55.
Entries in Davidson's shop-book at pp. 16, 17, 18, 19, 23, 27.

Difficulties occurring in the use of these moulds, Davidson and his man, Smith, went to New York, and had an interview with the Rubber Company, and immediately on their return new moulds were made, and a small number of syringes manufactured.

Babcock, p. 78; direct, 33; cross, 58, 59.
Davidson, p. 97; direct, 55.
Clough, p. 120; cross, 25.
Smith, p. 139; Direct, 15, 18.
Entries in Davidson's shop-book at pp. 31–42.

This visit to New York appears, by Davidson's book entry, p. 31, to have been January 4th, 1853.

By the testimony of *Haddon*, a witness for appellants, it appears that he examined *partially* the company's files of letters received during 1852, without finding any letters from Davidson. But he does find and produces a copy of a letter from the company to him, dated February 12th, 1853, relating to the subject of moulds for syringes. He also testifies that the first *charge* to Davidson was in *August, 1853*.

This testimony, therefore, confirms the evidence on the part of the appellee as to such work being in hand during the winter of 1852–3, and shows that for some reason this work was not charged upon their books at that time.

Haddon, p. 166.

A sketch of one of the moulds made in Davidson's shop in the fall of 1852 is in the case. Also some of the small metallic pieces which made part of these first syringes.

Clough, p. 117; direct, 6.
Smith, p. 139; direct, 16, 17, 29.

The *caveat* filed by the Davidsons January 15th, 1853 (dated the 8th), contains a full description of the invention in its substantial parts. See page 250; plate 3.

Of these double-neck syringes made in the winter and spring o

1853, there were from six to a dozen. They were unsatisfactory in respect to the rubber work done in New York, and also in respect to the working of the particular kinds of valves employed; but they embodied the invention completely, and nothing was needed in order to perfect the manufacture for the market, except improvements in workmanship, or in details making no difference in the substance of the invention.

Babcock, p. 77; direct, 31, 32; cross, 58, 59, 71.
Davidson, p. 97; direct, 50, 52, 58, 62; cross, 50, 87, 87½; direct, 85.
Smith, p. 140; direct, 23, 27.

None of these syringes were sold by, or with the consent or allowance of, either of the Davidsons. But it is *an important fact*, which may be found to bear on the question of novelty, that in order to save themselves from loss, the Union India Rubber Company, having on hand the parts of a considerable number of these early Davidson syringes, did, in 1854, put together and sell in New York a hundred or more on their own account.

Shephard, p. 164; direct, 15–20.

Charles H. Davidson went to California in June, 1853, and returned in February, 1855.

Davidson, p. 96; direct, 45.

His poverty was the cause of his going away, and when he returned from California, he was still poor, and worked some months at other matters to gain his living, but resumed the manufacture of his syringes about the close of the year 1855.

Babcock, p, 78; direct, 39, 40; cross, 66–70, 78.
Davidson, p. 97; direct, 56–59, 66; cross, 95, 96, 102–106.
Smith, p. 141; direct, 25, 26.

During his absence, his brother, Dr. Davidson, made various attempts to get the syringes manufactured by other parties, but without success. He himself was straitened in money matters at the time.

Davidson, p. 99; direct, 67; cross, 107–118.

Charles H. Davidson, when he resumed the business of his syringes, about December, 1855, gave his attention immediately to

the improvement of the instrument in those respects in which practical objections had been found to exist before his necessities had caused him to lay the subject aside.

These improvements related to the kind of *valves* employed, the manufacture of the *rubber parts*, and the manner of connecting the flexible tubes with the bulb.

In the syringes made by or for him before he went to California (as may be material to observe in reference to other questions of fact in the case), the bulb and the tubes were cast in a single piece of rubber. There were no couplings at all. Those which he began to make in the winter of 1855–6, had the bulb made separate, and connected at either end by couplings with the flexible tubes.

Upon the subject of the improvements made by Davidson in the construction of his syringe, after he returned from California, see

Babcock, p. 78; direct, 38; cross, 73–80, 115–118.
Davidson, p. 97; direct, 59, 60, 64, 65; cross, 88–94, 142, 143; direct, 86.

The syringes in this perfected form were introduced into the market in 1856.

Davidson, p. 112; cross, 143.

An attempt is made by the testimony of A. F. Farrar (p. 150) to show that C. H. Davidson never *himself* made these improvements in the details of the instrument, etc, etc. But it appears that the conversation he pretends to have had with C. H. Davidson occurred in Boston while C. H. Davidson was in California; and when Farrar changes his ground, and says it may have been Dr. Davidson, the appellee produces Dr. Davidson, who testifies (p. 213) that he never knew Farrar, or talked with him at all.

Upon the evidence which has thus been reviewed, we submit that the invention, patented to the appellee, was fully conceived and represented upon paper in August, 1852, embodied in a practical working instrument (the single-neck syringe) in October, 1852, described and drawn in the form of a double-neck syringe, with substantial completeness, in the caveat prepared January 8th, 1853, and embodied in the same form in several practical working instruments in the winter and spring of 1853. And that

all that was done, or necessary to be done afterwards, was the perfecting of details not essential to the character of the invention, and that this was done as soon as the inventors had reasonable opportunity to do it.

NOVELTY.

The appellants have in evidence against the novelty of the invention, two instruments, the priority of which the appellee does not now deny; but he does deny that they contain the patented invention.

1. The "Thiers" Syringe.

This was an instrument of French manufacture. It had two flexible tubes, with suitable valves, but it did not have an elastic bulb or chamber substantially like that shown in the patent.

1. It was not made of elastic material, but of a metal base plate and a rubber hood set upon it; the rubber hood forming one substantial part of the chamber to be collapsed, and the metal base plate forming the other substantial part thereof.

2. The chamber was not expanded by the elasticity of the material, but by means, wholly or partly, of a metal spring placed within the chamber.

3. The necessary prolongation of the flow of the pressure after the collapsing of the chamber has ceased, was accomplished, not by the reaction of the chamber alone, as in the Davidson instrument, but by that *and* an air chamber acting in connection with it.

Hibbard, p. 215; direct, 6–8.
Adams, p. 191; cross, 2.

These Thiers syringes were imported to and sold in this country in small numbers, until about the time of the introduction of the syringes patented to the appellee, and soon after that disappeared from the market.

Metcalf, p. 32; cross, 11, 12.
Burnett, p. 34; cross, 7, 8.

2. The "Maw" Syringe.

This was an instrument of English manufacture. It had two flexible tubes with suitable valves, but it did not have an elastic bulb or chamber substantially like that shown in the patent.

The chamber was partly elastic and partly rigid, the middle portion being formed of a cylindrical elastic tube with rigid metallic heads, which formed a *material portion* of the inclosure, and by their connection with the elastic part of the chamber, counteracted or prevented the compression of the chamber to properly expel the fluid.

Hibbard, p. 216; direct, 9.

In the answer just referred to, Mr. Hibbard testifies that the elastic chamber in the "Maw" syringe, is substantially different from the elastic chamber in the patent syringe. Mr. Adams, the expert called by the appellants, *does not testify that it is substantially the same*, but only that it has *an* elastic chamber, by the intermittent compression and relaxation of which the instrument is made to operate as an injection syringe.

Adams, p. 189; direct, 8.

He says the same of the "Thiers" syringe, which has the marked differences in the construction of the elastic chamber which have been before referred to; particularly the metal spring to expand the chamber.

Adams, p. 190; direct, 9.

But this testimony of Mr. Adams is of no value in the case, because it assumes that the invention patented embraces any and all elastic chambers by the intermittent compression and relaxation of which the instrument is made to operate as an injection syringe; whereas it covers only instruments having substantially *such* an elastic chamber as is described.

It is important to observe the practical difference between mere *couplings* of metal to connect the elastic chamber with the flexible tubes, and to contain the valves, and metal pieces, forming, as Hibbard expresses it, "a material portion of the inclosure, and by their connection with the elastic part of the chamber, counteracting or preventing the compression of the chamber" to properly expel the fluid.

In the former case, which is the case of the patent syringe, the "inclosure" or chamber, as the reservoir for receiving, by its expansion, the enema through one tube, and for supplying, by its

compression, the enema through the other tube, is complete, irrespective of the couplings. Holes are left at either end of the chamber, merely for the purpose of attaching metal or other rigid couplings for the connecting of the flexible tubes and for holding the valves. [See the Exhibit No. 28, produced by *Lockwood*, p. 222, direct 2, being a specimen of the Davidson bulbs, as they are made, showing the bulb as a separate part.] Of course the size of the holes and of the couplings is immaterial, provided that the size and shape of the chamber, independent of or relatively to the couplings, is such as to make it a proper reservoir for receiving by its expansion, and supplying by its compression, the enema through the respective tubes. [See the French syringes (3 sets), produced by appellants.]

But in the latter case, which is the case of the "*Maw*" syringe, the metal ends or heads are *substantial parts of the reservoir*, the elastic part of which is a mere cylinder, and of course has not the character or capacity of an elastic reservoir at all.

The expert witness, Mr. Adams (called by appellants), overlooks this practical difference, and mistakes the substantial construction and operation of the "Maw" syringe, when he says, at p. 189, that it "consists of a cylindrical piece of rubber with metal rims or casings at either end; *to those casings are valves*," etc., etc., if he means that those casings are for the purpose of holding the valves. In his cross-examination (p. 191, cross 6-9), he admits that from each of these metal "casings" (which are of the same diameter as the exterior diameter of the rubber cylinder) there proceeds "a metallic tube of about one third of the diameter of the metallic casing, *upon which tubes the inner end of the flexible pipes are drawn*; and that *the valves are placed within these small metallic tubes*." It thus appears that the purpose of accommodating the valves and coupling the flexible tubes is answered by the small metallic tubes which lead out from the metallic casings and the metallic casings themselves, three times as great in diameter as the metallic tubes must be for another purpose; and that purpose evidently is to form, with the rubber cylinder, the elastic chamber or reservoir itself.

The difference between the "Maw" syringe and the patent syringe as regards the construction of the elastic chamber, is proved to be important practically.

Mr. Adams, the appellants' expert, says the latter is "an improvement" upon the former; "is more efficient in operation."

Adams, p. 191; direct, 17; supporting *Hibbard*, p. 216; direct, 7.

Mr. Metcalf, another of appellants' witnesses says, that the rubber barrel with the metal heads is "certainly not so efficient" as the flexible bulb such as the patent describes.

Metcalf, p. 33, cross, 25; also cross, 24.

Mr. Burnett, another of appellants' witnesses, purchased *three* of these "Maw" syringes in 1853, and offered them for sale at his store, in Boston, where he then carried on a large business as apothecary. He "does not remember whether they were sold or what become of them."

Burnett, p. 34; direct, 6.

Mr. Metcalf, however, who bought out Burnett in 1855, found two of these three syringes in the stock purchased. He says they were shop worn; "they never were sold because I could n't put them in a condition that would make them valuable — gone with the rubbish of the earth — I don't know where." He says also that he saw similar instruments in New York, and in retail shops in Boston, "somewhere near that period — not recently," — also, that *since he has had for sale the patent syringes he has not sold one in twenty of all other constructions of syringes adapted to the same purpose.*

Metcalf, p. 30; direct, 2; cross, 1, 4, 8, 9, 19, 20.

Ford, another of appellants' witnesses, says that in 1857 [the year in which the Davidsons' syringes came largely into the market] he manufactured about two gross of syringes of the "Maw" construction: but that he afterwards "adopted" syringes like those shown in the patent, and that that *being considered a better article, his sales stopped* on the "Maw" syringes.

Mr. Lockwood, the appellee, having notified him about two years ago that he was infringing the Davidson patent, he (Ford) stopped such infringement, and took to making other syringes not covered by the patent, and he says "*Trade with us has dwindled down to nothing now.*"

Ford, p. 50; cross, 12, 17, 18; 8.

Dr. Ellis, another of the appellants' witnesses, bought a "Maw"

compression, the enema through the other tube, is complete, irrespective of the couplings. Holes are left at either end of the chamber, merely for the purpose of attaching metal or other rigid couplings for the connecting of the flexible tubes and for holding the valves. [See the Exhibit No. 28, produced by *Lockwood*, p. 222, direct 2, being a specimen of the Davidson bulbs, as they are made, showing the bulb as a separate part.] Of course the size of the holes and of the couplings is immaterial, provided that the size and shape of the chamber, independent of or relatively to the couplings, is such as to make it a proper reservoir for receiving by its expansion, and supplying by its compression, the enema through the respective tubes. [See the French syringes G and J, produced by appellants.]

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Ford, p. 50; cross, 12, 17, 18; 8.

Dr. Ellis, another of the appellants' witnesses, bought a "Maw"

syringe in Liverpool, and brought it to this country in 1852. He says it has been used by himself, and by others to whom he has lent it, as an enema syringe, and being asked the leading question whether it "has answered a good practical purpose," he says "Yes." But he adds that this one of his is the only one of the kind that he has ever known to be used.

Ellis, p. 27; direct, 2, 4, 6; cross, 2.
See also on this point *Prescott*, page 131; direct, 16–19.

There is a third class of instruments of French manufacture, in evidence for the appellants against the novelty of the patented instrument, and these are admitted by the appellee to contain the patented invention; but he denies that they came into the United States, or that they were made at all, until after the invention of his assignors, the Davidsons. There are several different instruments of this class introduced into the case, and it will not be possible to give them a common designation without perhaps implying something which the appellants will deny — we therefore arrange them under the names of the persons who are alleged to have had knowledge of them in this country.

3. The "Phelps" Syringe.

Dr. William H. Phelps testifies that the instrument marked A which he produces was, to his knowledge, in Boston in June or July, 1852, and that his brother then and there sold an instrument like it to one of the Davidsons.

Phelps, p. 19; direct, 4, 5, 7.

(*a*) By the cross-examination it appears that this witness is an infringer of the appellee's patent.

Cross, 1-10.

(*b*) Also, that there were no books of his brother's business at that time to show the date when he obtained such syringes or the date of the alleged sale.

Cross, 30, 31, 34.

(*c*) Also, that this transaction was about *two years* before a purchase which his brother made of a number of Davidson syringes from Charles H. Davidson, which syringes the witness describes as having the bulb made separate from the flexible tubes and *coupled to*

them. Cross, 45–54, 35, 55, 76. But Davidson *had no such syringes until 1856,* and consequently the witness is mistaken by two years in the date of the alleged sale of the instrument like Exhibit A, if such sale ever took place. If it took place in June or July of *1855,* instead of 1852, the statement would then not only be consistent as to the interval of two years before Davidson might have sold him the syringes with couplings, but would also be consistent with the evidence in the case, to be adverted to hereafter, that syringes like Exhibit A first came into the United States in the summer of 1855.

The cross-examination shows that the witness has no *real* means of fixing the year 1852, in which he says this transaction occurred.

Cross, 9, 58, 70, 71, 72.

(*d*) The syringe Exhibit A has stamped upon it "H. G. & Cie," and all the syringes of this kind were obtained by his brother from *Frederick Liese* of New York.

Direct, 12; cross, 28.

These facts alone will suffice to dispose of the testimony of Phelps; for it *will appear hereafter that Frederick Liese did not have any such syringes till 1855,* and then obtained them, or at least most of them, from a Paris house, for whom they were manufactured by *H. Galante & Company*, who marked them "*H. G. & Cie*," and who first manufactured such syringes in 1855.

4. The "Johnson" Syringe.

Dr. Henry F. Johnson (page 41) testifies that *in the summer or early autumn of 1852* he bought, in Philadelphia, an instrument like Exhibit J (direct, 5, 25); that in the summer or fall of that year he showed this syringe to Charles H. Davidson, and that Davidson proposed to Johnson to join him in taking out a patent for it, and manufacturing the article for the market (direct, 11, 16–20; cross, 23, 24); and that this conversation occurred in No. 1 Tremont Temple, Boston, in the office of Dr. Joseph Cheever, now of Charlestown, Mass. (direct, 16; cross, 12–18, 34).

This deposition was given *February 28th and March 1st.*

The appellee (May 2d) produced Dr. Cheever, who testified that he knew Dr. Henry F. Johnson while he, Dr. Cheever, occu-

pied the office in No. 1, Tremont Temple, and described the office as Dr. Johnson had described it, and that he, Dr. Cheever, did not occupy those premises till the 1st of January, 1853, which date he proves by producing his lease; that he occupied, next before that, an office in Bromfield street; that next before that he occupied an office in the old Tremont Temple, on the same site as the new; and that the old Tremont Temple was destroyed by fire on the night of the 30th of March, 1852, and not rebuilt so as to be capable of occupation again till February, 1853, he himself being the first tenant, and his room being the only one then ready for occupation.

Cheever, page 123.

The appellee also produced (May 3d) the Treasurer of the Bromfield Street Society, who testified (producing his books) that Dr. Cheever occupied rooms in Bromfield Street, as tenant of that society, from April 1st, 1852, to February 1st, 1853.

Sleeper, page 125.

The appellee also produced the Superintendent of the Tremont Temple, who confirms Dr. Cheever as to the time of the burning of the old Tremont Temple.

Hayes, page 126.

On the 5th of May, Dr. Johnson was recalled and testified that the conversation with Mr. Davidson when he showed him the Philadelphia syringe at Dr. Cheever's office in Tremont Temple, *occurred in the old Temple.*

The Philadelphia syringe having been purchased by Dr. Johnson in the summer or early autumn of 1852, the witness's statement as amended was even worse for him than before.

He may have been only forgetful upon his first examination. He was certainly reckless upon his second.

Perhaps some such conversation occurred between Dr. Johnson and C. H. Davidson in the summer of *1853*, before the latter went to California, and after the invention had been made and reduced to practice.

5. The "Hernstein" Syringes.

Herman Hernstein (page 51) testifies that he bought and sold articles like Exhibit G in the city of New York, seventeen or

eighteen years ago, and he afterwards states positively that it was as early as 1851.

(*a*) He has no books of his business earlier than 1858 — Cross, 38–57.

(*b*) He states the time 1857 from memory only, and he says he is enabled to recollect it by certain facts.

These are

1. That he occupied as his place of business 393 Broadway for twelve or thirteen years — cross, 57, 38, 62, 64. Granting that such a fact *could* help him to remember that he had bought and sold certain instruments eighteen years ago; the fact itself breaks down. For his son, who is the next witness produced (page 59), shows that his father took possession of the premises, 393 Broadway, in 1855, and moved out of them in April, 1865. He therefore occupied them *ten* years, instead of *twelve or thirteen*.

2. The witness professes to have his recollection assisted by the length of time he has been in business (cross 62). This is *twenty-four years*. Such a fact of course cannot aid him upon the matter to which he is testifying.

(*c*) As to other matters, showing looseness of recollection or of statement, or both, see cross, 13, 44–51, 67, 68.

But as in the case of Dr. Phelps, this testimony will be disposed of by the fact that all the syringes of the kind referred to were *bought by Hernstein of Frederick Liese*, who did not and could not have them for sale until 1855, as will be shown hereafter.

Hernstein, direct, 4–7; cross, 2, 3.

(*d*) Frederick Liese did have for sale in the winter of 1854–5 a syringe like Exhibit No. 23, which might easily be confounded, in recollection ten years later, with the syringe like Exhibit G.

See *Prescott's* deposition, to be fully referred to on this point hereafter. And it is probably to this other form of syringe that Hernstein's son refers, when he says that he saw syringes like Exhibit G in New York before May, 1865.

A. L. Hernstein, page 59; direct, 3.

(*e*) Hernstein, the father's, recollection does not appear to be reliable to any greater extent than this: that he had syringes of Frederick Liese, which he believes to have been like Exhibit G, before he, Hernstein, moved to 393 Broadway, which was in May, 1855. And this may well be so, the witness having confounded syringes like Exhibit No. 23 with syringes like Exhibit G.

6. The "Le Roy" Syringes.

Louis Le Roy (page 64) testifies that at different times from 1849 and 1850, he bought syringes like Exhibit G from *Frederick Liese*. These supposed purchases, so far as they were at a date prior to the Davidsons' invention, were made while the witness was in the employment of Mr. John Milhau, 183 Broadway, New York, who is still living, and whose books ought to afford satisfactory evidence as to the purchases referred to. But neither Mr. Milhau nor any book whatever is produced.

Le Roy, direct, 3–5; cross, 3, 4, 7.

7. The "Richardson" Syringes.

Thomas Richardson (page 68) testifies in his direct examination that he resides in New York, and that in 1850 he ordered from certain houses in London. syringes like Exhibit G, and speaks of having tried to find the "invoices." But it appears from the cross-examination that he did not come to this country till 1857. Therefore, his purchases, if made at all, were made abroad, and do not affect the appellee.

But upon the evidence, already mentioned and to be mentioned, showing the extreme improbability that any such syringe as Exhibit G was known in England till 1855, it is reasonable to suppose that the witness had in his mind the Maw syringes already referred to, which had a cylinder with rubber sides and metallic heads.

8. The "Wright" Syringes.

Richard Wright (page 71) testifies that he purchased in London in June, 1851, and brought to this country in July, 1851, an instrument called the "Kennedy" syringe. The direct and cross-exami-

nation clearly show that it was not such an instrument as is patented to the appellee.

Wright, direct, 5, 6; cross, 6–16.

A "Kennedy" syringe purchased by Mr. F. C. Cross in Liverpool, within a year or two, is produced by him and marked Exhibit No. 30.

Cross, page 227; direct, 2, 3.

Wright also testifies that he first saw an instrument like Exhibit G, "as near as he can remember in December, 1852," when there was a sample sent to him, and that he "ordered a quantity, and received and sold them in the fall of '1853." No books are produced. *He says he got them from L. & P. Grósholz, of Paris.* The complainants have taken the deposition of Philippe Grosholz, of that firm, who testifies that neither he nor his firm ever exported to Richard Wright, nor to any other American house, any such syringes.

Grosholz, page 234; int. 3, 4; page 307; ans. 3, 4.

9. The "Feuchtwanger" Syringes.

Louis Feuchtwanger (page 170) testifies that in 1850 he saw in the city of New York, at Fabrequettes Fils et Morra's store, and at Frederick Liese's store, syringes like Exhibit G.

The depositions of Fabrequettes Fils and Morra were afterwards taken by the appellee, and show that their house in New York did not have syringes like Exhibit G earlier than 1855.

10. The "Green" Syringe.

Thomas J. Green (page 173) testifies that an instrument like Exhibit G was brought to his store in New York over thirteen years and a half-year ago; which (the witness testifying May 15th, 1866), would make it, as he says it was, as early as some time in November, 1852. This was after the Davidsons' invention. But if it were not, a mere statement that a single instrument was *seen* by the witness over thirteen years ago, nothing more being known about it, will weigh very little on a matter where, as here, the appellants were bound to furnish satisfactory affirmative proof both of the time when, and of the identity of the subject-matter.

11. The "Shiels" Syringes.

George E. Shiels (page 175) testifies that in 1849–50, at the store of Mr. John Milhau, 183 Broadway, New York, there were for sale syringes like Exhibit G.

No book is produced.

He speaks from recollection merely. Cross, 36.

He made no particular examination of the syringes, and does not know that they had any valves. Cross, 41–44.

These syringes were bought from Frederick Liese. Direct, 7.

12. The "Liese" Syringes.

It has been seen that all the important witnesses for appellants (except Wright, who is answered by Grosholz) testify to syringes which were obtained, directly or indirectly, from *Frederick Liese, of New York.*

We now proceed to the testimony in the case bearing upon the question whether or not Frederick Liese had any syringes like those covered by the patent, and when and how he obtained them.

Edward Oelzner (page 61) testifies that he was clerk for Frederick Liese from 1842 to 1852, and again from 1855 to 1865, and that before he left in 1852, Liese had on sale in his store syringes like Exhibit G.

The question is, whether Oelzner is right in his recollection of the kind of syringes which Liese then had.

(*a*) He says that Liese imported these syringes from Paris, from *Fabrequettes fils et Morrá* and from *Grossman & Wagner.* Direct, 11; cross, 8, 9, 10.

And, as has already been stated, evidence from those houses themselves will be hereafter exhibited, which will make it clear that no such articles were exported by them till 1855.

But for the present, we will consider Oelzner's testimony, without resort to the foreign depositions.

(*b*) Oelzner was, from 1852 to 1855, at Kruger & Co's., in New York, and while there sold for them the same sort of syringes he had previously sold at Liese's store. Cross, 1, 2, 15.

But Kruger & Co. are not produced by the appellants.

(*c*) In this, the first deposition of Oelzner, no books or records of any kind, to fix the time and the description of syringes alleged to have been for sale by Liese in and before 1852, were produced.

Some weeks later he was recalled, and produced the invoice book of Frederick Liese, covering the time 1849–1855.

He is asked if he has examined the invoice book as to the matter of syringes having "elastic bulbs, two flexible tubes, and suitable valves for receiving and ejecting fluids," and replies that he has. He is asked if he has *drawn off from that book the list of syringes answering that description*, and he replies that he has, and produces it (direct, 5, 6). His list is printed at page 67 of the Record.

[In passing, we suggest that the appellants having offered the invoice book of Frederick Liese as containing entries of the syringes imported by him, and having offered a list of *all the instruments mentioned in that book which answer the description of the patented syringe*, cannot now deny either, 1, that the book shows the syringes imported by Frederick Liese; or, 2, that the entries therein do furnish an intelligible description of the syringes; or, 3, that Oelzner's list gives *all* the entries answering to the description of the patented syringe.

This book shows between 1849 and 1855, in all only *forty nine syringes*. Now, *H. Hernstein* says that during the years 1850, 1851 and 1852, he could safely say that *he* bought of Frederick Liese *fifty* syringes, which he believes to have been like the patented syringe. Cross, 32, 53, 54; and there are various other witnesses who (or whose employees) were supplied during this period with syringes, which they also believe to have been like the patented syringe.

If all the instruments on Oelzner's list appeared by his testimony to be like the patented syringe, there would be a grave arithmetical difficulty in the appellants' proof.

But it appears from his statement under cross-examination, that the instruments invoiced as "clysopoches" were "Thiers" syringes like Exhibit H, and of these there are *eighteen*, leaving only *thirty-one* syringes which *could* have been like Exhibit G, to supply Mr Liese's supposed customers from 1849 to 1855.

Thus the invoice book produced by Oelzner strongly opposes the evidence for appellants of large purchases of such syringes by various parties in 1849–1852.]

But the answers of Oelzner on cross-examination will show that in regard to the remaining thirty-one he knows nothing at all reliable.

He says he knows in regard to the first, viz, "Page 43, Dec. 1849, No. 3, 1 Clyso livier a boule;" and he knows "because we handed it all round, and looked at it as something new at that time" (cross 8), but when asked as to the meaning of the words in the entry, he says, "I can't swear to the meaning of the words. I can't translate it literally what it means."

He says he knows in regard to those on page 87, "or some amongst them, anyhow;" viz., from entries of "1 clysoir new pattern." But when asked whether he knows from the language of the entry itself that either of those four articles was a syringe having "an elastic sac, two flexible tubes and suitable valves," he answers, "I cannot be positive about it. I think I am." (Cross, 4, 7).

Now we submit that if the invoice entries put in by the appellants are proved to refer to *other syringes than the patented ones*, the result is to prove by the books of Frederick Liese that he did *not* have the syringes like the patented ones till after the close of that invoice book in 1855. We have seen how far Oelzner falls short of proving that the entries mean syringes like the patented one.

We have evidence on the part of the appellee that they do refer to instruments of an entirely different construction.

Charles E. Prescott (page 129), witness for the appellee, was the son-in-law of Liese, and in business with him from April, 1852, to May, 1861. He states that he "was intimately acquainted with the business, as he had entire charge of the books, conducted the foreign correspondence (except the German), and gave all the orders." Direct, 8, 9.

He goes over Oelzner's list, and states in each case what the entry means and what the instrument was. Direct, 22–31. And it appears that in every instance but one the instrument mentioned

is utterly unlike the patented syringe; and that in that one instance the entry which Oelzner gave as in French is in German, and that assuming it to be correctly put into French by him, the French gives no indication whatever of the nature of the instrument, except that it was for injecting purposes.

But the testimony of Prescott goes farther.

He testifies that in November, 1853, Mr. Liese being in Europe, sent out to New York one sample syringe, viz., the "Maw" syringe (having a rubber barrel and metallic heads), and identifies the invoice entry. Direct, 10, 11. This syringe was afterwards sold to Dr. J. W. Phelps, of Boston.

Direct, 13, 14.

He testifies that afterwards similar syringes were imported from *France*, and identifies the invoice "16th December, 1854" (Direct, 12), an entry which will prove important in another relation.

He testifies that he had a conversation with Mr. Liese after the arrival of the English syringe, in which objections were urged against it, and that those of like construction which were afterwards used did not give satisfaction.

Direct, 15–19.

He knows that it was subsequent to 1853 that syringes like Exhibit G were first imported by Mr. Liese; that Liese bought them of *Galante*, who sent them to *Fabrequettes fils et Morra*, who shipped them to Liese; that afterwards Fabrequettes bought them on Liese's orders.

Direct, 20, 21; cross, 11.

He identifies upon the invoice book produced by Oelzner, an invoice dated July 20th, 1855, of such syringes as were invoiced 16th December, 1854, viz., the French make of syringes like the "Maw" syringe, having rubber barrel and rigid heads.

Direct, 39, 41–48.

He does not find any entry in the invoice book of any syringes

having an elastic sac and two flexible tubes, except those *having the same number*, 371, as those of 16th Dec., '54, which he knows to have been a "Maw" syringe, and he believes that no syringes having the *bulb* of rubber like Exhibit G came until after that invoice book closed, August, 1853 (p. 138).

It will be found that those statements of Prescott's harmonize exactly with the depositions of Galante and Fabrequettes fils et Morra, to be presently referred to.

(*d*) Before passing to the depositions of those witnesses, we submit some remarks on the testimony as it rests in *this* country, as to the purchase of syringes like Exhibit G in Liese's store in New York, at any earlier date than 1855.

The appellants themselves have produced a witness who went into Liese's employ in *February, 1853,* and remained two or three years. He identifies Exhibits C and I, the "Maw" syringe and the "Thiers" syringe, as in Liese's store when he was there; but he says nothing of seeing instruments like Exhibits G or J (the patented syringe) till he left Liese's and went into the employ of a Mr. Tieman.

Rynders, p. 60.

This witness's *silence* on this important matter, is a strong fact in support of Prescott and against Oelzner.

(*e*) It is to be observed, that all the witnesses who testify on this branch of the case for the appellants, have the Exhibit G *shown to them before they begin to describe it.*

(*f*) It is to be observed that none of them undertake to produce a book or paper of any kind except Oelzner, whose invoice book tells strongly against him.

(*g*) It is to be observed, that neither Milhau & Son, nor

Kruger & Co. are produced, nor their books, but only two or three clerks testifying from mere recollection.

(*h*) It is to be observed, that there were in the New York market in 1849–1855, a great variety of instruments bearing more or less resemblance to the patented instrument; and with which, after the lapse of ten or fifteen years, witnesses, having nothing but recollection to rely upon, might honestly confound it.

(*i*) It is to be observed, that a hundred or more of the Davidson syringes were put together and into the market by the Union Rubber Company in 1854. Snowdon saw one in Philadelphia in that year. Page 71.

(*k*) *We now come to the evidence obtained by the complainant from Europe.*

Fabrequettes fils testifies that he *first sold syringes having a rubber sac and two flexible tubes and valves December 16th, 1854,* and that this was to *Frederick Liese.* He annexes a copy of the invoice, in which will be found (p. 238 of Record) the same entries that Prescott, at p. 131, gives as the entry of the first French instruments of that construction imported by Liese from France. He also says he exported such syringes to Frederick Liese July 20th, 1855, again coinciding exactly with the testimony of Prescott.

Fabrequettes, pp. 230, 232.

He says (p. 232) that these syringes were made for him by the firm of *Varnout & Galante.*

This witness is confirmed by his partner, *Morra*, at p. 233.

[It is to be observed, that when these witnesses speak of syringes with rubber sac, flexible tubes and valves, they refer to Galante's

imitation of the "Maw" syringe, which preceded his making of the syringes like Exhibit G. This will appear by Galante's testimony.]

Henri Galante (p. 235) testifies that he went to London in June, 1854, and there saw for sale syringes, of which the *Exhibit A*, produced with his deposition, is his reproduction. What he saw was the Maw syringe. He proceeded to make syringes on the same plan with his Exhibit A, and continued till March, 1853, when he devised the syringes like his Exhibit B, which, by the change from the cylinder form to the bulb form, removed objections which had been found in the previous ones, those like his Exhibit A; these objections being precisely those which Prescott says were urged against those like A, when they were received in New York. Galante also says that he supplied *his syringes like A to Fabrequettes fils & Morra before the year 1855.* He also says that the syringes which he made *before March, 1855, were not marked;* but that those made afterwards were marked "H. G. & Co." upon the elastic bulb.

He describes his syringes made before March, 1866, like his Exhibit A, as having an elastic *chamber*, and his syringes made afterwards, like his Exhibit B, as having an elastic *bulb*.

(*l*) It was stated by Oelzner, that some of Liese's syringes like appellants' Exhibit G. were exported to him by *Grossman & Wagner*.

There being no other witness who says they exported them at all, we might, perhaps, have refrained from taking any proof in regard to Grossman & Wagner.

The only entry on Oelzner's list from the invoice book of Liese, purporting to show an invoice from Grossman, is that of "p 87, November, 1850." Oelzner says he cannot be positive that any part of this entry relates to a syringe, having an elastic sac, two flexible tubes and valves.

The entry is in German, and Oelzner, who does not appear to be qualified, but appears to be not qualified, as a translator of French, gives his version or conjecture in French.

We have furnished, however, such evidence from Grossman & Wagner themselves, as could be obtained.

Wagner (p. 233) testifies that he has no recollection of ever seeing such a syringe as the patented one, although he was engaged in the manufacturing department of his firm's business.

Grossman, as the return of the commission (p 240) shows, was not in France at the time of the caption; and the deposition of Cross, (p. 122) shows what efforts were made on the part of the appellee to get his deposition, and without success.

13. The "Codman" Syringe.

It will be remembered that Kruger & Co. are not produced, nor their books, by the appellants.

But, *Dr. B. S. Codman* (p. 182) produces (for the appellants) an invoice from Kruger & Co. to himself, dated April 7th, 1853.

He says the instruments in this invoice (three in number) "all had rubber bulbs," and he thinks one had two flexible tubes, (direct, 2, 3).

On the cross-examination he says that this *one* differed in several essential particulars from Davidsons' viz., in the metallic ends, *the form of the bulb*, and the quality of the rubber. (Cross, 13, 14.)

He afterwards says that he cannot remember the construction of it distinctly enough to say that it had a flexible induction tube and a flexible eduction tube and valves (cross 16); and that he cannot tell whether it was or was not a "barrel syphon," like Exhibit D. (Direct resumed, 4, 5, 3.)

14. The "Hovey" Syringe.

Charles H. Hovey (p. 194) testifies that in 1853 his employer, Joseph T. Brown, of Boston, had *one syringe* which he says was like Exhibit J "in principle — bulb, valves, and two tubes (direct, 2); resembled it "in general appearance." (Direct, 4.)

Where this syringe came from he does not know. If it came from New York, he says it was *probably from Liese.*

The witness left Brown in 1856.

Brown is not called, nor is any book or paper produced.

15. The "Jones" Syringe.

Wm. P. Jones (p. 203) testifies that "about 1852 or 1853, he should think," he sold, in the store of Kelly & Levin, of Boston, syringes like Exhibit J, and *marked H. G.;* and he fixes the time

by the fact that he had these syringes at the same time that he was selling certain "rubber nipples." (Direct, 3, 4.)

Kelly & Edmands are not produced.

After much cross-examination their invoice book is brought to light, and it turns out that the first invoice of the "rubber nipples" is April, 1858. (Cross, 27.)

The witness attempts to explain the non-appearance of rubber syringes at all in the invoice book by saying that they did not enter all invoices in the foreign invoice book, as they had duplicate invoices, and marked the cost of the goods from the duplicate; but it appears that it was their *uniform* practice to have duplicate invoices, so that there was no reason for not entering any which did not extend to all. (Page 206.)

16. The "Giles" Syringe.

Mr. Joel Giles (p. 197) testifies that in the latter part of October, 1851, in Cambridge, Massachusetts, he saw and examined a syringe which he minutely describes and which, with the single exception of the valves, was according to his testimony *exactly such an instrument as is made by the appellee at this day.*

He says that he "did not take it apart and did not see the valves, but he supposed then, and does now, that it contained an inlet and outlet valve of some kind. He saw no external means of operating it, if it had not such valves." But we suppose that if the Court should find Mr. Giles' testimony in other particulars satisfactory as ground for a decree, this fact that there is no evidence whatever, that the syringe in question contained any valves, while the syringe claimed by the appellee is expressly one which has valves, will prevent it from being of any avail to the defence.

As a matter of fact such syringes *will work*, though imperfectly, without valves, and they have, for some good reason, been at times so made and sold. Mr. Lockwood, the appellee, produces two, which he has himself bought within a few years, one in Paris and the other in London, marked 26 and 27 respectively, which were and are without valves (see page 222). Therefore, it may well have been that, if Mr. Giles did see the syringe as he thinks he did, it nevertheless had no valves; and if so it is of no avail to the appellants. But Mr. Giles' testimony is open to much observation in other respects.

It is to be observed that the syringe he describes (assuming it now to have had valves) was not like any of the imported syringes, which other witnesses speak of, as being in this country at that time. Those were syringes like Exhibits G. and J. But the Giles syringe was exactly like the appellee's syringes as he began to make them in 1856. No other person than himself appears to have seen *any such syringe as he describes* until 1856. *His testimony, therefore, has no support or countenance whatever in any other testimony in the case. It stands absolutely alone.*

Let us consider the particulars of his testimony with a view to ascertain if he probably really saw what he says, and no doubt believes that he saw.

(*a*) At the time in question he had just passed through a most critical stage of his illness (rheumatic fever), and "when he was well enough to do so, though his *fever was still progressing and had not reached its crisis*," he examined the syringe.

This was not a physical condition favorable to such an examination and observation as could be depended upon when recalled by an effort of sheer recollection *fifteen years afterwards.*

(*b*) He examined the instrument "for the purpose of satisfying himself" of its construction and operation, and replaced it in its box or case, where it remained till it was taken away.

He does not remember who brought the instrument in or who took it away.

(*c*) The syringe cannot be found. No syringe like it (except the appellee's syringes as now made) has appeared in the case.

With the exception of Mr. Giles, no one appears ever to have seen it, *or even heard of it.* And *he never saw nor heard of it before nor since.* He had a man-nurse with him at the time, whose hearesay-statement is in the case to the effect that "he recollected there was a syringe there, but he did not examine it, and did not know its construction or operation."

(*d*) He mentions by name six persons now living who visited him during his illness, none of whom have any recollection of any such instrument being there, if we may judge from the fact that none of them are called as witnesses. And the instrument was in Mr. Giles' room *two weeks.*

(*e*) Dr. Wyman, his attending physican, is allowed by agree-

ment to put in his note to Mr. Giles, instead of giving his testimony; and in that note, printed at page 202, Dr. Wyman says to Mr. Giles, "*I am sorry I cannot aid you with my recollection as to the injecting apparatus in 1851.*" He then proceeded to speak of "seeing a similar apparatus for *injecting blood into the veins* in Paris in 1853." Of course *he* did not see the syringe in Mr. Giles' room in 1851.

(*f*) Mr. Giles mentioned that when it was suggested to him during his illness to take an injection, and he observed that he had never taken one, some one, whom he does not recollect, observed that he need have no delicacy about it *as he could administer it himself.* He never did use it, or cause it to be used. But this statement, made to him and now remembered by him, has of course helped to fix in his mind the conviction as to the nature of the syringe which was so brought to him.

The appellee produced Dr. Ramsay (page 218), who has been an apothecary in Cambridge since 1832, and was up to 1854 the only apothecary in Old Cambridge (where Mr. Giles' sickness occurred). He testifies that during the whole time he has kept on sale the different kinds of improved injection syringes; has had the Davidson syringes since they came out, some seven years or more; that until Davidsons' came out he never heard of a syringe with an elastic bulb and two tubes; that he supplied Mr. Giles with medicines during his illness in 1851; that Mr. Giles and Dr. Wyman had both called upon him, in regard to Mr. Giles having then had such a syringe as he describes, and that he (Ramsay) "told them he had no recollection of seeing anything of the kind."

But Dr. Ramsay also says that for some years before getting Davidsons' syringes, he had in his store a Draper syringe, so called, and that *those* and the old-fashioned straight piston syringes were all he had before he got Davidsons'—(the time when Ramsey first had the Draper syringes, is fixed by Draper's books in 1838, page 299, — that these Draper syringes were more expensive than the piston syringes, and were *preferred to them because they could be used by an individual without a second person.*

One of these Draper syringes is in the case, marked Exhibit 25.

The Court will not reverse the judgment in this case upon the ground of this deposition of Mr. Giles, standing as it does, absolutely isolated in the case, supporting nothing, and supported by

nothing, which is testified by any other witness, and in irreconcilable opposition to all the *probabilities* of the case; but will readily believe, while conceding the perfect sincerity of the witness, that the *impression* made upon his mind, while in a high fever, by a few minutes' examination of the instrument, has been, after the lapse of fifteen years, confounded in his memory with his *knowledge* of other like instruments seen by him at various times since.

17. The Boston Syringes.

Much evidence has been taken by the appellants, tending to show that in 1853 or in 1854, syringes of French make, like Exhibit G, were in the Boston market.

The object of the production of this testimony may have been to show that Galante was mistaken in supposing himself to have been the first to make such instruments in France. In this respect, it is quite unimportant. It is not pretended that these syringes in the Boston market were of Galante's make, or that they came from or through Frederick Liese; therefore the proof upon the subject has no testimony to assist those witnesses for appellants who testified to having had such syringes of Liese, before 1855.

If the object be generally to show prior knowledge and use in this country, the proof fails, because it goes to a date long subsequent to that of the Davidsons' invention.

If the object be to raise a presumption of fact that the Davidsons knew of syringes like theirs being in public use, and on sale, and acquiesced therein, the proof also fails, because until February, 1855, C. H. Davidson was in California, and the application for patent was filed in April 1856 (see page 241). Also, because Dr. Davidson testifies that he has no recollection of seeing any such syringe, except his brother's, before applying for the patent (page 113; cross, 164, 165), and there is no attempt by appellants to show that he in fact did know, or was in the way of knowing, that any such syringes except his brother's were in this country at all before the applications for patent.

But a brief review of the evidence referred to will be given for abundant caution.

A. F. Farrar (p. 192) testifies that he went into the employ of

George N. Davis, in March, 1854; that in the fall of 1854 syringes of the general construction of the Exhibits G and J were received by Davis, an invoice purchased by *John Haskins* in Europe, both English and French; that *Davis's invoice book would show the date.*

W. H. Finney (p. 153), testifies that he was book-keeper with Davis from 1850 or 1851, to November 1855; that he saw instruments similar to, and he thinks exactly like, Exhibit G; that they were purchased by John Haskins in Europe, some English and some French (direct, 4, 5, 6, 12–15). In reply to the question whether syringes like Exhibit G were the samples brought home by Haskins, or in the invoice received afterwards of goods purchased by him, he says he cannot say positively, but he *thinks* some similar to Exhibit G were received in the invoice (direct, 13).

The cross-examination of this witness shows that his occupation with Davis was exclusively the keeping of the books (cross, 8); that he has not consulted any book or memorandum or paper to enable him to fix the time when the syringes like Exhibit G were received by Davis (cross 41); that the only reason he has for fixing the date is his recollection that they were in the store a considerable length of time before he left, which was November (1855 (cross, 42); but he cannot state nearer than "a year, or it may have been two years, and perhaps longer," the time when the firm was changed from George N. Davis to George N. Davis & Brother, when the billheads and signs and titles of accounts were all changed, an occurrence which he *did* have occasion to observe and remember in his capacity as book-keeper (cross, 3–5). See also as to the uncertainty of his recollection, cross, 33–36.

John H. Doyle (p. 160) testifies that he was in the employ of George N. Davis from 1852 to 1859, and that "to the best of his recollection" he saw, in the summer of 1854 in Davis's store, syringes like Exhibit G. He testifies from mere recollection, unassisted by any book or paper or circumstance.

Henry A Hall (p. 179) testifies that he was in the employ of

Davis, *he thinks* in 1853 and 1854 (direct, 2); that he saw syringes like Exhibit G at Davis's, while employed at Davis's, *he thinks* (direct, 5); he cannot tell whether it was in 1855 or 1856 that he left the employ of Davis (cross, 1, 2); he has, since leaving Davis, dealt in various syringes like Davidsons', and has not had occasion to call to mind the particulars of the construction of the syringes Davis had since leaving him (cross, 6–8).

There is one fact, however, which this witness *has* reason to remember, and that is, *where he first saw such syringes* as he says Davis had, and which he thinks were like Exhibit G. He says he thinks he saw them first at *J. W. Norcross & Co.'s* (direct, 5).

The complainant produces J. W. Norcross (page 223) and his invoice book, and the first invoice of any syringes having a bulb of elastic material and two flexible tubes, is dated Paris, *August 24. 1865.* The entry is "Clissoirs Anglais," which the court will find on Galante's circular in the case, as his name for his syringes which he began to make in March, 1855.

John Haskins (p. 192) testifies that he was in Paris in June or July, 1854, and purchased for Davis & Brother "various rubber articles, *among them a few syringes*," and he says that he cannot give any description of those syringes (direct, 2, 3).

This witness was examined before (page 36), and then stated that he did not recollect whether he bought any syringes in Paris or not (cross, 5). But he did recollect and minutely describe syringes which he bought that same summer in England, viz., the "Maw" syringes, like Exhibit D (direct, 2).

It should be added that this witness has been largely engaged in connection with one *Thomas Lewis*, in infringing the complainant's patent (page 194).

This witness also produced a letter from Maw & Co. (page 196) He says he received one from Messrs. McIntosh & Co., which he gave to *Mr. Lewis*, and which is *not* produced (cross, 28–30).

Upon all this testimony relating to syringes like Exhibit G, said to have been imported by George N. Davis & Brother, in 1854, several remarks may be made, which we submit, deprive it of credit in the case.

1. Neither George N. Davis nor his brother is produced as a witness.

2. Neither their invoice books nor books of account are produced, although information was given by appellants' witness, Finney, as to how they might be obtained (page 159; cross, 47–49; direct resumed, 1).

3. The clerks, etc,, who *are* produced, testify only from recollection, and very vaguely at that.

4. The only documentary evidence we do get, viz., the books of J. W. Norcross, taken together with the testimony of appellee's witness, Hall, contradicts the other witnesses, and fixes the time of Davis's having these syringes as after August, 1855.

5. The fact that Haskins, a strongly interested witness, declines to undertake to give any description of these syringes (page 192; direct, 2, 3) raises a suspicion that he knew that whatever else they might have been, they were not such syringes as the other witnesses thought they were.

INFRINGEMENT.

It is admitted by the appellants that the instrument marked "complainant's Exhibit No. 7" is a specimen of the syringes made and sold by them.

In regard to this syringe, Mr. Hibbard, witness for appellee testifies that in his opinion, it is substantially the same as the syringe described and represented in the appellee's reissue, "differing in the form in which the tubes are attached to the bulb. It has substantially the same parts in combination, and operates in the same way."

Hibbard, p. 215; direct, 5.

Mr. Adams, the expert witness for the appellants, is fully examined upon other points, but says nothing upon the question of infringement.

B. R. CURTIS,
CAUSTEN BROWNE,
For Appellee.

Supreme Court of the United States.

DECEMBER TERM, 1868.—No. 140.

IN EQUITY.

HAMILTON D. LOCKWOOD, COMPLAINANT,

vs.

DAVID B. MOREY ET ALS., RESPONDENTS AND APPELLANTS.

APPEAL FROM U. S. CIRCUIT COURT, DISTRICT OF MASSACHUSETTS.

BRIEF FOR APPELLANTS.

THIS is a suit to restrain the respondents from the infringement of letters patent granted upon reissue to the complainant's assignors for an Improved Enema Syringe; and for an account.

The original patent was granted to Charles H. Davidson, assignee of Charles H. Davidson and Herman E. Davidson the alleged inventors, March 31, 1857.

Charles H. Davidson assigned his interest in the patent to Herman E. Davidson Sept. 20, 1859.

Herman E. Davidson assigned the whole interest in the patent to the complainant April 25, 1865.

The bill was filed August 5, 1865.

The defendants in their answer deny that said Davidsons were the original or first inventors of the thing claimed in said reissued patent, and it is alleged that the same thing or a substantial and material part thereof, was before known to many persons named in said answers. They deny that the complainant ever had any exclusive possession, under said original or reissued patent, in fact or in

law, of said alleged invention, and aver upon information and belief that the complainant long acquiesced in the public and general use of said invention.

They deny that they have infringed any valid rights of the complainants — and they aver that the alleged invention had been in public use and on sale with the knowledge and consent of the inventors, more than two years prior to the application for a patent.

Judgment having been rendered for the complainant in the Circuit Court, the defendants have brought the case to this Court by appeal.

State of the Art.

Before proceeding to a discussion of the points that may be in controversy, it may be convenient to consider the condition of the art at the time of the alleged inventions, and to explain a portion of the exhibits.

The patents in question relate to improvements in *enema syringes.*

The claim in the original patent granted to the complainant's assignors is expressed as follows:

"What we claim as new and desire to secure etc. is the combination of the prolate spheroidal shaped elastic sac with flexible tubes terminating in valve boxes containing valves arranged for the purpose of eduction and ejection, when the sac tubes and valve boxes are in or nearly in the same axial line, the whole operating together substantially in the manner and for the purpose set forth."

The claim in the reissued patent is as follows:

"What is claimed as the invention of Charles H. & Herman E. Davidson is a syringe having an elastic bulb or chamber, flexible tubes and a suitable valvular arrangement when organized so as to operate substantially as described."

Among syringes in public use at the date of the alleged invention were

1. The old metallic cylinder with plunger.
2. The simple elastic bulb, with a single rigid pipe.
   Complt.'s Exhibit No. 17.

3. The Maw Syringe, with elastic chamber, two flexible tubes in line with the chamber, with suitable valves.
   Defts.' Exhibit D.

4. The Thier Syringe, with the same elements, differently arranged.
   Defts.' Exhibit I.

It may be convenient here also to exhibit —

5. Syringes alleged by the defendants but denied by the complainant to have been known and in use, before the alleged Davidson invention.
   Exhibits G. J. and A.

It will, we presume, be admitted, that these syringes are substantially the same as the Davidson syringe.

6. The Davidson syringe. Exhibit, No. 24.

7. The Richardson syringe, alleged by complainant to infringe his patent.

8. The Pearshall & Gilbert syringe, shown in drawing. Exhibit 24.

We shall argue the following points:

I.

The Davidsons made no invention till November 1852, after they had seen the Maw Syringe.

a. Herman E. Davidson, one of the alleged inventors, in his testimony before the Commissioner in the matter of the interference declared in 1856 between the Davidsons and one Garrett, upon the question of priority of invention, does not name or refer to any date in connection with the invention earlier than November, 1852.
   Record, pp. 274 to 279, inclusive.

b. But he now swears that the proposed invention was the subject of conversation between himself and his brother in the month of August, 1852, and that he carried a completed syringe to Charlestown, and delivered it to his brother Charles H. in the month of September, of the same year.

Record, pp. 115 to 119, ints. 9 to 15.

" p. 133, cross-int. 52.

c. He amended his statement upon a suggestion from his brother.

Record, p. 280, cross-ints. 3, 4, 5, 6 and 7.

d. This explanation is wholly inconsistent with facts asserted by Davidson elsewhere in his testimony.

Record, p. 275, in reference to drawings and correspondence.

Record, pp. 118 and 119, in reference to the instrument sent to Charlestown in the month of September, 1852; ints. 14 and 15.

Record, p. 277, answer to 3d int.; and Record, p. 116, answer to 9th int., in reference to the time when he treated his sister, Mrs. Delano, for cancer.

Record, p, 131, cross int. 36.

e. Moses Babcock, in his deposition given in said interference case, does not pretend to any knowledge that either of the Davidsons was engaged in making a syringe previous to 1853.

Record, pp. 273 and 274.

But in his deposition in this case he states that he knew that Charles H. Davidson was engaged in the manufacture in the latter part of 1852.

Record, p. 96, ints. 3, 4, 5, 6 and 7; also ints. 9 to 20 inclusive, and ints. 22, 23 and 24.

Record, p. 273, int. 2.

f. Doctor Davidson admits that he saw the Maw Syringe at Doctor Ellis's in October, 1852.

Record, pp. 32 and 33, testimony of Calvin Ellis, ints. 2, 3, 4 and 5.

Record, p. 131, testimony of Herman E. Davidson, cross-ints. 34 and 35.

The conclusion upon this branch of the case is that the caveat is the earliest trustworthy evidence concerning the time when the alleged invention was made.

Record, p. 329.

The syringe alleged to have been then invented was well described in the original patent.

a. Description contained in the caveat.
Record, p. 330.

b. Herman E. Davidson's testimony in the interference case.
Record, p. 275, int. 3.

c. Herman E. Davidson's testimony in this case.
Record, p. 118, int. 14; record, p. 122, int. 40.

d. Argument of A. Gregory, upon appeal to Commissioner.
Record, pp. 325 to 328.

According to the complainant's testimony, the syringe made by the Davidsons consisted of a rubber bulb, spheroidal or prolate-spheroidal in form, opening at the opposite extremities into two flexible rubber tubes, the axes of which are in the same line, or nearly in the same line with the axis of the bulb. At the extremities of the tubes were suitable valve boxes, and valves constructed according to ways or methods then known, and to the end of one of the tubes was attached an induction pipe, and to the end of the other, an eduction pipe.

II.

Their invention if valid for anything, is valid only to the extent of the claim in their original patent.

Assuming that the Davidsons were the original and first inventors of the syringe described in the testimony of the complainant, the action of the Patent Office in limiting the claim of the original

patent to " the combination of the prolate-spheroidal shaped elastic sac, with flexible tubes terminating in valve boxes, arranged for the purpose of eduction and ejection, when the sac, tubes, and valve boxes are in, or nearly in the same axial line," was just and proper, although taken upon an erroneous and imperfect knowledge of the state of the art at the time when the alleged invention was made.

(1.) The office erred in supposing that Pearshall and Gilbert's syringe was the only syringe then in existence that was provided with an elastic bulb and operated by the pressure of the hand, and without the aid of an assistant, and the office may have erred also in supposing that the tubes of this syringe were flexible.

See description of the syringe, extract from the Franklin Journal, Record, p. 164.

a. The Theirs Syringe (exhibits " B " and " I ") was old; was made with " an elastic bulb, or chamber, flexible tubes, and suitable valvular arrangement," and all so constructed and combined as to enable the patient to use it without the aid of an assistant; and in its parts, and as a whole, it is fully described and clearly embraced in the complainant's reissued patent.

See claim of reissued patent, Record, p. 20.

Testimony of J. W. Phelps, Record, p. 22, ints. 8 & 9.

" H. Hernstein, Record, p. 74, int. 2.

" John Haskins, Record, p. 45, ints. 5 & 6.

" Edward Oelzner, Record, p. 78, ints. 10 & 12.

b. A syringe having an elastic bulb, or chamber, spheroidal in shape, and which could be used by patient without the aid of an assistant, was not new.

Complainant's exhibit, No. 17, Record, p. 146, int. 76.

Testimony of Herman E. Davidson.

Record, p. 274, int. 3.

Record, p. 116, int. 9.

Record, p. 128, cross-int. 1.

Testimony of H. Hernstein, Record, p. 68, cross-ints. 28 and 29. Record, p. 71, cross-ints. 53, 54, 55.

Testimony of Edward Oelzner, Record, p. 79, cross-int. 7.

c. The barrel syringe (defendants' exhibits "D," "C," and "H") was not only known and in use at the time of the hearing upon the question of priority of invention between Garratt and the Davidsons in 1856, but it was known and in use in Europe and in this country prior to the time of the alleged invention by the Davidsons.

Testimony of Dr. Ellis, Record, pp. 32 & 33, ints. 2 to 7.

" Dr. Parks, Record, p. 34, ints. 2 & 3.

" Dr. Putnam, Record, p. 49, int. 5.

" Herman E. Davidson, Record, p. 131, cross-ints. 29 to 36.

An examination of these exhibits, which illustrate, for the present purpose, the state of the art at the time of the alleged invention, furnishes the means of determining the nature of said invention.

1. The Davidsons were not the inventors of elastic tubing, for Herman E. Davidson admits its existence and his knowledge of it at the time when he claims to have begun his experiments.

Record, p. 118, int. 14.

2. Nor were they the inventors of an elastic bulb, or chamber, for these are shown in different forms in defendants' exhibits "D," "C," "H," "B," and "I," and in complainant's "Exhibit 17."

3. They were not the inventors of the valvular arrangement, for this is shown in many of the exhibits.

See also testimony of Francis Draper, Record, p. 299 & 300.

4. They did not invent the spheroidal form of an elastic bulb, for that is described as old by Herman E. Davidson.

Record, p. 128, cross-int. 1.

5. Nor did they invent "a syringe having an elastic sac with flexible tubes terminating in valve boxes containing valves arranged for the purpose of eduction and ejection when the sac, tubes and valve boxes are in or nearly in the same axial line," for these devices, with precisely the same arrangement, are shown in the barrel syringe, exhibits "D," "C," and "H."

6. Nor were they the inventors of a syringe having "an elastic bulb or chamber, flexible tubes, and a suitable valvular arrangement," for both the Thier Syringe and the barrel syringe fall within this description, which is the substantial part of, and is quoted from, the claim in the reissued patent.

It will appear from parts of the record not yet considered, that the Davidsons had been anticipated in every particular; yet if it be assumed, for the present purpose, that the state of the art at the time when the alleged invention was made, has been fully set forth in the portion of the argument already submitted, it yet follows that the claim of the Davidsons would be limited to the introduction of an improved element, to wit: the *spheroidal shaped* elastic sac, as a member of a combination already well known. In other words, the Davidsons substituted a spheroidal bulb or chamber for a barrel-shaped chamber when in combination with "flexible tubes terminating in valve boxes containing valves arranged for the purpose of eduction and ejection when the sac, tubes, and valve boxes are in, or nearly in, the same axial line."

The barrel syringe, which is proved to have been in this country prior to the Davidson invention, is, substantially, in construction and operation, like the Davidson Syringe, and if made after the Davidson patent was reissued, would be an infringement; for there is no difference in the combination patented by Davidson and that existing in the barrel syringe, but only an improved bulb or chamber in the Davidson Syringe, and the claim should have related to this improvement.

The reissued patent claims "a syringe having an elastic bulb or chamber, flexible tubes, and a suitable valvular arrangement when organized, so as to operate substantially as described."

This claim is sufficiently broad to cover not only the syringe

which the Davidsons claim to have invented, but every syringe which may be hereafter invented, having the parts named, with the qualities stated and operating as described, though the syringe might differ substantially in its parts, and as a whole from the syringe which the Davidsons claim to have made.

Nor can there be a question that the Thier syringe and the barrel syringe fall within the claim of the re-issued patent.

Testimony of Joseph H. Adams, Record, pp. 247, 248, ints. 9, 10, 11, and 12.

Burr *vs.* Duryee, 1 Wallace, 576.

Case *vs.* Brown, 2 Wallace, 320.

And the opinion of Adams is not controverted by the testimony of Wm. C. Hibbard, who was examined as an expert in behalf of the complainants.

Record, p. 281.

It thus appears that the original patent corresponded substantially to the invention, assuming that the Davidsons had not been fully anticipated, and it also appears that the claim in the reissued patent is broader than the invention and consequently is void.

The phrase "definitely distinguishable from the other parts so claimed without right as aforesaid," (stat. 1837, c. 45, sec. 9.) should be construed as relating to the invention as described in the patent. If a particular claim is too broad, the entire claim is void. Where there are several claims in a patent, some of them may be declared void and others may be sustained, — inasmuch as in such a case one claim may correspond to the invention described and be valid, while another claim may cover what was not invented and be void consequently; but where a patent contains a single claim only, as in the present case, which claim covers or includes what was not invented, the patent is void, as there are no means of definitely distinguishing upon the face of the patent itself what is valid, from what is "claimed without right."

III.

The syringe made by the defendants, complainant's Exhibit No. 7, is made under and according to patents issued to Francis B.

Richardson and others, as set forth in the defendants' answer (record, p. 11), and it is not an infringement of the plaintiff's invention, if valid only according to the original patent.

IV.

The claim in the reissued patent is broader than the invention, and consequently is void.

In its fair construction it covers the Maw Syringe and the Thiers Syringe, both of them old, known and used.

The reissued claim is as follows: "A syringe having an elastic bulb or chamber, flexible tubes and a suitable valvular arrangement when organized so as to operate substantially as described."

It cannot be claimed that any single element of the instrument is new. Every part is old. The claim is substantially if not technically for a combination. It is the arrangement or organization which is claimed as new and useful.

If the fair and natural construction of the reissued claim includes any syringe of which the Davidsons were not the original and first inventors, then the claim is broader than the invention, and so is void.

We submit that such construction clearly includes both the Maw and the Thier Syringe. Any construction of the reissue claim which does not include them is, we contend, forced and unnatural.

Can such a construction be supported? By striking out the words "or chamber," and giving a very literal meaning to the word "bulb," we may make a distinction. We may say the Maw Syringe has everything else, but it has not a bulb. Even this, however, cannot fairly be said of the Thier Syringe, for it has an elastic bulb.

But those words cannot be stricken out. The surrender for reissue was for the very purpose of inserting them. The original

claim describes a bulb in the words "prolate-spheroidal-shaped elastic sac." The word *chamber* was not there. It was not in the caveat, and it was used in the reissued claim with a purpose and meaning.

It is, in no sense a synonym with *bulb*. Every bulb is a chamber, but a chamber is not necessarily a bulb. Chamber is the larger phrase and may include bulb, but it certainly includes *cylinder* as well. Any inclosed space is a chamber.

In the Davidson *caveat* they describe their sac as spheroidal, *cylindrical* or globular.

Record, p. 330.

The Maw Syringe has everything in the Davidson Syringe, but the bulb. The Davidson Syringe as described in the reissue, includes every element of the Maw, including the chamber, which the Davidsons do not now claim to have invented.

Unless the Court can say that *chamber* means nothing else than *bulb*, the claim is broader than the invention, when construed in reference to the Maw Syringe.

The Thier Syringe, we submit contains every element of the Davidson Syringe including the bulb.

It may be contended that the reissue claim is narrowed so as not to include the old syringes by force of the words "when organized so as to operate substantially as described."

The drawings are part of the description, and it may be said that the claim is only for an organization such as is shown, that is for a syringe with bulb or chamber tubes and valves organized in the particular manner shewn in the drawings.

Now the drawings in the re-issue are the same as in the original patent, and show the tubes and bulb in the same axial line.

If this is all that is claimed, we are content, for our syringes are not so constructed and we do not infringe.

But the complainants are compelled to go further and say that their reissue covers not only the form shown in their drawings, but all other forms where the same parts are "organized so as to

operate substantially as described," using the word *operate* in the sense of *to produce effect*.

This we submit is not a fair construction. Their patent is for a syringe, an instrument composed entirely of old parts to produce not new effects, but the effects of all syringes in a better manner.

The word *operate* relates to the mechanism of the syringe, not to the final result of its use, to the structure and form of it produced only by new combination or organization of old parts, and cannot enlarge the meaning of the description.

Surely it cannot be held that this patent for a machine composed wholly of old parts organized as described and shown, includes machines composed of the same parts in a form neither described nor shown, because they are all designed to operate alike, that is, to produce like effects.

In this sense, all modern syringes operate alike. They not only inject fluids, but they do so by means of pressure upon elastic chambers, through flexible tubes and valves.

If this is what is meant by *operating* as described, then the claim is too broad, as including the old Maw and Thier Syringes already exhibited.

Let us test this claim farther.

"A syringe having an elastic bulb or chamber, flexible tubes and a suitable valvular arrangement when organized, so as to operate substantially as described." In other words, a syringe, having old parts organized so as to operate as described.

Regarded as a machine, if it have any novelty, it must be either in some one of its parts, *as a part*, of a syringe, or in some new combination of old parts, as parts of a syringe.

The words "when organized," as referring to parts of a machine, can only mean *when combined*. An organization of parts is a combination of parts, and old parts, when organized so as to operate as described, are such parts combined so as to operate as described.

In Buck *vs.* Hermann, 2 Blatch. 405, Nelson, J. says: "In order that a new combination may be patentable * * the new article must be different from the one on which it is an improvement *not*

only in its mechanical contrivance and construction, but in its practical operation and effect in producing the useful result."

In Lee *vs.* Blandy, Ms. McLean and Leavitt, JJ., Ohio, 1860, found in Laws Dig., "Combination" A. sec. 60, it is said — "there are two classes or kinds of combination which are properly the subject of a patent. *First*, in which all the parts were before known and where the sole merit of the invention consists in such an arrangement of them as to produce a new and useful result or when an inventor has succeeded in making such an arrangement of known parts that they produce a result never before obtained. *Second*, where some of the parts or elements of the combination are new *and their invention claimed*, but where they are used in combination with parts or elements that were known before."

The Davidson Syringe contains no new combination of parts. If the parts are all regarded as old then the elastic bulb, or sac, or chamber is one and the same part or element in the combination, and the combination is precisely the same as in the Maw.

Regarded as a part of the syringe, and in reference to the combination merely the elastic bulb, sac and chamber are equivalents.

A differently formed chamber is the only difference between the Davidson and Maw Syringes as shown here. We submit that —

1. That difference if patentable must be patented as a new part or element of a syringe, or new chamber, but it is not so claimed as such in the patent and is admitted to be old.

2. That difference is not described, the words bulb or chamber covering both alike.

3. If described it would not be a patentable difference, the cylinder and bulb being the same mechanical contrivance, producing the same result in the same manner differing only in degree.

If this difference is patentable then every possible variation in the form of the chamber from a cylinder to a globe would be so.

4. If the word *chamber* had been omitted, and the word bulb only had been used, we have in the Thier Syringe precisely the

same combination as in the Davidson Syringe, unless the claim be limited to the syringe as shown in the drawing, with the tubes and bulb in the same axial line, and in that case we clearly do not infringe.

In any view, we maintain that the claim in the reissued patent is broader than the invention, and is void.

V.

The original patent was neither "inoperative nor invalid," nor was the specification "defective or insufficient," and the reissue was therefore without authority of law.

Burr *vs.* Duryee, 1 Wallace, p. 531.
Case *vs.* Brown, 2 Wallace, p. 320.

VI.

The patent is wholly void as well for the invention claimed in the original patent, as for the broader claim found in the reissued patent, because syringes containing all that is claimed as the invention of the Davidsons, were long before their alleged invention known and used in this country.

(*a*) William H. Phelps of Boston, testified that his brother in his presence sold a syringe, Exhibit A, which is in every particular the syringe described in the caveat, to one of the Davidsons previous to August, 1852, and fixes the date by a circumstance about which there can be no doubt.

Record, pp. 21, 22, and after.

b. Edward Oelzner, of New York, testifies that the same syringe, Exhibit G, was sold by Frederick Liese, about 1850 or 1851.

Record, pp. 76, 77, and after.

c. John Rynders testifies that he went into the employment of Frederick Liese in February, 1853, and that Liese sold syringes like Exhibit G, at that time, and continued to sell them while he continued with him, two or three years.

Record, pp. 75 & 76.

d. Herman Hernstein testifies that he purchased syringes like Exhibit G, of Frederick Liese, in the city of New York, seventeen or eighteen years ago.

Record, p. 64.

e. Louis LeRoy of New York, testifies that he sold syringes like Exhibit G in 1849 and 1850, at the store of John Milhan, druggist, 183 Broadway.

Record, pp. 80, 81 & 82.

f. Richard Wright, of Philadelphia, states that he saw a syringe like Exhibit G in December, 1852, and his testimony confirms the statements of the witnesses referred to upon this point.

Record, pp. 90, 91, ints. 3 to 13.

Record, p. 93, cross-ints. 17 and 18.

Record, p. 307.

g. Lewis Feuchtwanger, of New York, testifies that he saw syringes like Exhibit G in 1850, at the store of Fabrequettes Fils, et Morra, and Frederick Liese, New York, and that he saw them in London and Paris, in the following year.

Record, pp. 221, 222, and after.

h. Thomas S. Green testifies that syringes like Exhibit G were brought to his store in New York, previous to November, 1852.

Record, p. 225.

i. George E. Shiels testifies that syringes like Exhibit G were in the store of John Milhan, druggist, New York, where Shiels was an apprentice in the years 1849 and 1850.

Record, pp. 228, 229, and after.

j. Letters of J. Maw & Co.

Record, p. 255.

k. The testimony of Joel Giles is conclusive that he had a syringe like Exhibit G. in his possession at Cambridge, in the month of October, 1851.

Record, pp. 257, 258.

The complainant attempts to rebut or control in some degree the positive testimony of the defendants that the syringe described in the caveat and patent was known and used in this country in the years 1848, 1849, 1850, 1851, 1852, and all before the Davidsons pretend to any thought of the invention, by depositions of persons in France and the United States, which will now be considered.

1. Testimony of Chas. E. Prescott.
   Record, p 167 and following.

2. Eugene Fabrequettes, Jr.
   Record, pp. 303, 304 and 305.

3. Joseph Morra.
   Record, pp. 305 and 306.

4. H. G Wagner.
   Record, pp. 306 and 307.

5. Philippe Groshols.
   Record, pp. 307 and 308.

6. H. Galante.
   Record, pp. 308 to 311 inclusive.

7. H. D. Lockwood.
   Record, pp. 290 and 291.

The examination of the testimony of these witnesses shows that Philippe Groshols, H. G. Wagner, and Joseph Morra, are ignorant, and from the nature of their pursuits from 1848 to 1853, could not have been otherwise than ignorant, of the subject-matter of inquiry; that Galante says he did not manufacture till 1854 and 1855, but that he himself attained his knowledge of the syringe in question, from English manufacturers, thus justifying the inference that the syringe was earlier brought to this country through better informed dealers; that the Eugene Fabrequettes, whose testimony was taken, and who was one only of several members of the firm to which he belonged, is wholly ignorant of the history of the syringe, and merely states that his books give no information earlier than

December 1854, and finally, that Prescott, who did not enter the service of Liese till April 1852, did not recollect any such syringe at Liese's store at the time mentioned by Oelzner and others, nor does he find any early entry upon the remaining books, many of which have been destroyed, that he now can designate as referring to syringes like Exhibits D and G.

He was at that time a young and inexperienced person, a book-keeper, and from the nature of the case not familiar with the goods themselves.

His ignorance cannot control or in any degree impair the positive testimony of Oelzner, Rynders, Feuchtwagner, Hernstein, Le Roy, all of whom testify to the fact that Liese had for sale and did sell syringes like Exhibit G, at various times previous to November 1852, while the positive statements of Giles, Phelps, Wright, Greene, Shiels, and Maw & Co., are not in any manner disturbed by the French depositions.

Nor can it be inferred from the ignorance of Galante and others, whose testimony was taken in France, that syringes like Exhibit G were not obtained from sources not known to these witnesses.

1. Maw's letter,
   Record, p. 255.

2. Dr. Wyman's testimony.
   Record, pp. 264, 265.

3. Galante's statement that he obtained the model, being his Exhibit A, in London, in the month of June, 1854.
   Record, p. 309.

4. Galante's list of French houses supplied by him, in which the house A. Luer, of Paris, does not appear.
   Record, p. 309.

5. Persons named by the witnesses as manufacturers and dealers in syringes who have not been examined, and from whom syringes like Exhibit G may have been obtained.
   Record, p. 309.
   "Ratie & Gaballe," Record, p. 213.

—— "Louer," New York, Record, p. 82.
"McIntosh & Co.," Liverpool, Record, pp. 86 and 251.
Enock and Oppenhiem, Record, p. 267.
Jules Glendsay, Record, p. 267.
Meyer & Co., London, Record, p. 86.
Kruger & Co.

6. The force of the French testimony is controlled entirely by the positive testimony of the following persons who saw the bulb syringe, having two flexible tubes and suitable valves, in this country, long before Galante says he made them, viz:

W. H. Phelps, Record, pp. 21, 22, 25, 29, and 31.
Dr. H. F. Johnson, Record, p. 5.
Herman Hernstein, Record, pp. 64, 67.
Albert L. Hernstein, Record, p. 75.
John Rynders, Record, pp. 75, 76.
Edward Oelzner, Record, pp. 77, 78, 83.
Louis LeRoy, Record, pp. 81, 82.
Richard Wright, Record, p. 91.
A. F. Farrar, Record, pp. 195, 197.
W. H. Finney, Record, pp. 199, 200.
John Doyle, Record, pp. 208, 209.
F. M. Shepard, Record, p 313.
Lewis Feuchtwanger, Record, p. 221, *et seq.*
Thomas T. Green, Record, 225.
Herman Liese, Record, p. 226.
Geo. E. Shiels, Record, p. 228.
Henry A. Hall, Record, p. 234.
Benj. S. Codman, Record, p. 238.
Charles H. Hovey, Record, p. 256.
Joel Giles, Record, p. 258, *et seq.*
William P. Jones, Record, p. 266.

VII.

The syringe made by the appellants is a combination of old parts, substantially different from the Davidson Syringe in structure and effect.

It is difficult to discuss this proposition in advance of the appellee's argument; but we submit,

That if all the parts of the Davidson Syringe be old, his claim can only be valid for some particular combination of them indicated in his patent.

If his patent be construed to include every combination of those parts, it covers the Maw and Thier Syringes, and is void, as being too broad.

If construed to include only syringes such as that pictured in the Davidson drawings, ours bears no resemblance to it, except in the fact that we use some of the old parts used in all syringes, and that the instrument is organized so as to operate substantially like the Davidson, and every other syringe of modern structure.

Our syringe, it is true, is composed of an elastic bulb, flexible tubes, and suitable valves, as are several of the old syringes, as well as Davidson's.

We will note some of the differences.

1. Our bulb is not their bulb, but different in this, that ours has but one aperture, while theirs has two apertures.

2. The arrangement, or organization, differs in this, that in ours the fluid in the bulb is above the point of delivery, and we have gravity to aid in expelling it, while in theirs one-half the fluid is below the centre of the bulb.

3. Ours has a three-way piece not found in theirs, and which cannot be used with theirs.

4. Ours is so constructed as to receive other pipes for various purposes.

These differences we submit constitute ours a different instrument, different in its combination of parts and different in its mode of operation.

The principles involved in the discussion are too familiar to the Court to require particular statement.

McCormick *vs.* Talbot, 20 How. 405.

That the complainant is limited to the peculiar combination of devices invented and described is well settled.

Case *vs.* Brown, 2 Wallace, 320.
Burr *vs.* Duryee, 1 Wallace, 553.

The summary of the case as presented by the defendants is (1) that the first attempt of the Davidsons to make a syringe was not earlier than November, 1852; (2) that the invention, if valid for anything, is only valid to the extent of the claim in the original patent; (3) that the syringe made by the defendants does not infringe the legal rights of the complainant, admitting his claim to be valid according to the original patent; (4) that the claim in the reissued patent is broader than the invention, and consequently is void; (5) that the reissue of the patent was without authority of law, and is therefore void; (6) that the patent is wholly void, as well for what is claimed in the original patent, as for what is claimed in the reissued patent, upon the ground that the syringe which the Davidsons claim to have invented was known and used in this country for many years previous to the time when the alleged invention was made; (7) that our syringe is a combination of old parts, substantially different from the Davidson Syringe in structure and effect.

GEORGE S. BOUTWELL,
HENRY F. FRENCH,
for the Appellants.